

DTV standard over time, and stated our intention to consider incorporation into our rules of proposed changes that reflect the kind of broad industry consensus developed through ATSC's standards-making procedures. In the *NPRM*, we sought comment on whether our rules should be further changed to reflect any revisions to the ATSC DTV standard A/53B since the August 7, 2001, version.³¹⁵

143. In response, the Advanced Television Systems Committee ("ATSC") indicates that it has made changes to its "ATSC Digital Television Standard (A/53B)" since its August, 2001 standard.³¹⁶ According to ATSC, the ATSC DTV Standard (A/53B) has been amended to include Amendment 1, which sets forth the Active Format Descriptor ("AFD").³¹⁷ ATSC states that AFD is intended to help avoid the "postage stamp" effect that can result from mismatched aspect ratios.³¹⁸ The AFD function provides the ability to communicate to the display device the "active area" of the video signal. For example, it can communicate to a display that a 4x3 video signal contains within it a letterboxed 16x9 video image. ATSC states that while use of AFD is optional under the standard, it believes that to the extent broadcasters want to implement this functionality, it is important that it be done in a way that is consistent with the Standard.³¹⁹

144. CEA and Sharp request that we adopt Amendment 1 but also require broadcasters to transmit AFD information and "bar data" whenever the active area of video does not fill the coded frame.³²⁰ Sony Electronics also supports making use of AFD mandatory and suggests that the Commission determine an appropriate phase-in period for implementing AFD in order to minimize any burden on broadcasters for updating their digital broadcast equipment (potentially through software upgrade) to incorporate the AFD functionality.³²¹ MSTV/NAB states that while the development of the AFD is a valuable enhancement to the DTV standard, they do not think that transmission of AFD data needs to be mandatory.³²² MSTV/NAB suggests that market forces will be sufficient to ensure use of the descriptor in appropriate circumstances.³²³

145. We find that it is desirable and appropriate to update our DTV rules to recognize

³¹⁵ See *Second DTV Periodic NPRM*, 18 FCC Rcd at 1320 ¶ 113.

³¹⁶ See *id.* The version currently specified in Section 73.682(d) of the rules, 47 C.F.R. 73.682(d), is dated August 7, 2001. Section 73.682(d) also specifies that DTV transmissions are not required to comply with portions of the ATSC DTV Standard that make reference to 18 specific video formats, defined in terms of, e.g., screen aspect ratios, frame rates and type of scanning.

³¹⁷ See <http://www.atsc.org/standards/a_53b_with_amendment_1-2.pdf>.

³¹⁸ "Postage stamp video" occurs when a wide image is letterboxed into a 4:3 broadcast (black top & bottom), and the 4:3 broadcast is column boxed onto the display. Sharp Comments at 5. The Consumer Federation of America asserts that consumers purchasing new DTV sets are liable to encounter this problem. CFA Reply at 1.

³¹⁹ ATSC Comments at 3.

³²⁰ CEA Comments at 24; Sharp Comments at 5-6.

³²¹ See Letter from John Godfrey, Sony Electronics, Inc. (Dec. 1, 2003).

³²² MSTV/NAB Reply at 26.

³²³ *Id.*

Amendment 1 (May 23, 2002) to ATSC DTV Standard A/53B (August 7, 2001). We decline to mandate that broadcasters use the AFD when the active video portion picture does not completely fill the coded picture. The revisions in the new version of the ATSC DTV Standard were developed through careful consideration and deliberation within the technical committees of ATSC and thus reflect a consensus agreement based on the input of parties from various segments of the industry.³²⁴ While broadcasters will have the option to use AFD, if a station includes AFD data it must follow the ATSC DTV standard. As more consumers acquire widescreen aspect ratio sets, the problem of "postage stamp video" will become more prevalent if not addressed by broadcasters. Broadcasters should have every incentive to make their programming attractive to viewers and to avoid disenfranchising those viewers as they begin to adopt DTV.

146. The ATSC also adopted Amendment 2 to A/53B, which revises the transport section of the ATSC Digital Television Standard, Annex C, to update normative references to avoid conflicts, and to establish a common methodology for carriage of private data in the ATSC Transport Stream.³²⁵ The amendment defines the ATSC Private Information Descriptor for the carriage of private descriptor-based data, and it also clarifies rules for use of the MPEG-2 Registration Descriptor mechanism for management of private data in the digital multiplex. To be consistent with the current version of the ATSC A/52 Digital Audio Compression Standard, Amendment 2 revises the way audio language is signaled in the ATSC system and specifies the use of ISO-639 language encoding to identify written and spoken languages. Amendment 2 also specifies some requirements that had been implemented in transmission and receiving equipment but not properly specified in A/53B. These included the requirement that each service with an audio component must include at least one "complete main" audio service and the requirement that the video Elementary Stream component be identified with MPEG-2 stream-type value 2. Upon final approval of the ATSC membership, ATSC suggests that the Commission incorporate Amendment 2 to A/53B into its rules.³²⁶

147. MSTV/NAB, commenting before the completion of Amendment 2, suggests that the Commission adopt Amendment 2 into our rules upon final approval of the ATSC membership.³²⁷ Public Television states that it strongly supports the comments of ATSC filed in this proceeding that request incorporation of A/53B Amendment 2 (transport stream amendments) into Commission rules.³²⁸ Disney/ABC states that incorporating such changes will help keep the digital standard current, flexible, and relevant.³²⁹

148. We will update our DTV rules to recognize Amendment 2, as released by the ATSC on May 19, 2003.³³⁰ Updating the rules to reflect improvements in the standard will benefit both the public

³²⁴ ATSC Comments at 2.

³²⁵ ATSC Comments at 3.

³²⁶ ATSC Comments at 4.

³²⁷ MSTV/NAB Comments at 32.

³²⁸ Public Television Reply at 43

³²⁹ Disney/ABC Comments at 5.

³³⁰ See <http://www.atsc.org/standards/a_53b_with_amendment_1-2.pdf>.

and broadcasters by allowing broadcasters to make technical improvements in their service that will enhance the quality of DTV services they provide. Accordingly, we are revising Section 73.682(d) of the rules to specify ATSC Doc A/53B (ATSC Digital Television Standard, 7 Aug 01), Revision B with Amendment 1 and Amendment 2.³³¹ We also continue to encourage further improvements to the DTV standards. Although it will be necessary to conduct additional rule making activity to incorporate such changes in the rules, we nonetheless will endeavor to pursue such rule making as quickly as possible, either through our periodic review of the DTV transition or through separate proceedings as may be appropriate.

2. PSIP

149. In the *DTV Tuner Order*, we stated that we would seek comment on whether the Commission should adopt the ATSC Program System and Information Protocol ("PSIP") standard³³² into our rules as part of the DTV periodic review process.³³³ PSIP is data that is transmitted along with a station's DTV signal that tells DTV receivers information about the station and what is being broadcast. PSIP provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it.³³⁴ PSIP identifies both the DTV channel and the associated NTSC channel and enables DTV receivers to associate the two channels, thereby making it easy for viewers to tune to the DTV station even if they do not know the channel number.³³⁵ In addition to identifying the channel number, PSIP tells the receiver whether multiple program channels are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, and conveys available v-chip information, among other things.³³⁶ The Commission has recognized the utility that the ATSC PSIP Standard offers for both

³³¹ As provided in the current Section 73.682(d) and as set forth in the Commission's decision adopting the ATSC standards for DTV service in Fourth Report and Order in the DTV proceeding we have not incorporated Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table 3" in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. See Fourth Report and Order in MM Docket No. 87-268, 11 FCC Rcd 17771 (1996).

³³² See "Program and System Information for Broadcast and Cable," Advanced Television Systems Committee, Doc. A/65B, Rev. B to PSIP for Terrestrial Broadcast and Cable ("ATSC A/65B") (Mar. 18, 2003).

³³³ *DTV Tuner Order*, 17 FCC Rcd at page number, ¶ 55. We stated that in the interim we will continue to support and encourage the voluntary use of the PSIP specification by broadcasters and cable operators and its inclusion in consumer electronics equipment. Section 73.682(d) of our rules includes a reference to the ATSC PSIP Standard as a document that licensees may consult for guidance.

³³⁴ See ATSC's PSIP website at <<http://www.psip.org/>>.

³³⁵ Linkages between analog and DTV channels are managed through the DTV "Transport Stream Identifier" and analog "Transmission Signal ID" (Both, "TSID"). See ATSC A/65B, 6.3.1 Terrestrial Virtual Channel Table p. 32; EIA/CEA-608-B. The Association for Maximum Service Television ("MSTV") has undertaken the task of maintaining a list of TSIDs. See <<http://www.mstv.org/downloads/TSIDASGN.doc>>. ATSC also coordinates the TSID registration process. 6.3.1 Terrestrial Virtual Channel Table, ATSC A/65B at 32, note 6.

³³⁶ As will be discussed in sections J. 3 and K., *infra*, PSIP enables the proper functioning of v-chip and closed captioning. See CPB/WGBH National Center for Accessible Media Comments ("NCAM") at 5; Tim Collings Comments at 1; Joel Federman Comments at 3.

broadcasters and consumers.³³⁷ In the *NPRM*, we sought comment on whether to require the use of PSIP and which aspects of PSIP should be adopted into our rules.³³⁸ We also sought comment on, among other things, whether and how broadcasters include PSIP information with their digital broadcast signals and also how consumer electronics equipment manufacturers build equipment to search for information in DTV signals.

150. Commenters almost uniformly agree that PSIP is an important element of the DTV System and is essential to reliable, real-world operation and the success of the DTV transition.³³⁹ MSTV/NAB states that most broadcasters now recognize and support the use of PSIP.³⁴⁰ ATSC asserts that consistent broadcaster implementation of PSIP will allow consumer electronics manufacturers to design receivers that can easily tune to DTV channels to provide viewers with a good user experience.³⁴¹ Cox Broadcasting says that by requiring broadcasters to use PSIP, the Commission would create marketplace certainty for equipment manufacturers so that they have incentive to invest in innovative devices that would rely on the PSIP standard.³⁴² CEA states that PSIP functionalities enable a viewing experience that competes with delivery by DVD, satellite, and cable.³⁴³ In addition, CEA extols PSIP for allowing broadcasters to build on their existing brand-identity, allowing transparent changes in DTV assignments, and allowing transparent tuning of associated translator stations.³⁴⁴

151. Zenith states that although some broadcasters are voluntarily transmitting PSIP information, it is often improperly implemented, thereby diminishing the value of PSIP and causing consumer confusion.³⁴⁵ ATSC reports that acquisition of a DTV channel not transmitting PSIP is often significantly slower than acquisition of a channel with PSIP.³⁴⁶ Sharp states that because the PSIP

³³⁷ The channel mapping protocols contained in the PSIP identification stream could help resolve issues associated with digital channel positioning. *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598, 2635 (2001) (petitions for reconsideration pending). See also *First DTV Periodic Review Second Report and Order*, 17 FCC Rcd at 16003 ¶ 55.

³³⁸ *Second DTV Periodic NPRM*, 18 FCC Rcd at 1320-21, ¶¶ 114-18.

³³⁹ See ATSC Comments at 5; MSTV/NAB Comments at 27. See also Public Television Comments at 43; CEA Comments at 24-31; NCAM Comments at 4; Cox Broadcasting Comments at 7; Harris Comments at 8-10; Sharp Comments at 6; Thomson Comments at 11; Disney Comments at 2, 5-6; CERC Comments at 10; Zenith Reply at 3. But see Fireweed Communications LLC Feb. 5, 2004 ex parte (stating that in its market in South Central Alaska there are virtually no viewers, so PSIP is not important.)

³⁴⁰ MSTV/NAB Comments at 27 and footnote 36 (projecting that 84.46 percent of respondents to a late-2002 PSIP survey expect to utilize PSIP by May 1, 2003.)

³⁴¹ See ATSC Comments at 5.

³⁴² Cox Broadcasting Comments at 6-7.

³⁴³ CEA Comments at 25.

³⁴⁴ CEA Comments at 26.

³⁴⁵ Zenith Reply at 4.

³⁴⁶ See ATSC Comments at 5.

standard is not mandatory, digital equipment must be designed to recognize both correct PSIP information and incorrect PSIP information, and discard the latter or attempt to understand what was meant to be communicated.³⁴⁷ Sharp further states that incorrect PSIP information may actually have significant adverse affects on other broadcasters when, for example, a broadcaster's programming is blocked or the program of one broadcaster may appear on another broadcaster's channel.³⁴⁸ Harris reports that because different receivers have been designed to operate under different assumptions of what broadcasters intend to carry in the PSIP and program streams, receivers may reboot, lock up, or display blank screens when encountering different stream conditions.³⁴⁹ Tribune asserts that action by the Commission now will avoid needless consumer frustration and confusion and will almost certainly help speed up the digital transition.³⁵⁰

152. We conclude that adoption of ATSC A/65B (PSIP) into our broadcast transmission standards will serve the public interest. As pointed out by commenters, during the development of PSIP, the ATSC carefully considered which elements of PSIP should be mandatory and which should be optional.³⁵¹ Further, based its experience with the deployment of over 180 PSIP systems, Harris states that it is not aware of any difficulties that are experienced by either the broadcaster or the viewing consumer if the ATSC A/65B PSIP standard is properly implemented.³⁵² We find the cost to broadcasters of implementing PSIP will be minor in comparison to the overall costs of converting to DTV and will provide many options to expand on the investments they have made to convert to DTV.³⁵³ We therefore require that broadcasters fully implement PSIP to the extent that ATSC A/65B requires.³⁵⁴ In order to give broadcasters adequate time to come into compliance, this requirement shall take effect 120 days after publication in the Federal Register.³⁵⁵ We expect broadcasters to populate the required tables and descriptors with the proper information to help receivers assemble functioning guides. All

³⁴⁷ Sharp Comments at 10.

³⁴⁸ Sharp Comments at 10.

³⁴⁹ Harris Comments at 8.

³⁵⁰ Tribune Reply at 4.

³⁵¹ ATSC Comments at 7; CEA Comments at 25.

³⁵² Harris Comments at 9.

³⁵³ Harris reports that based on its experience as a manufacturer of broadcast station PSIP equipment, it currently would cost a DTV broadcast station \$29,900 for full implementation of PSIP, including all Program and System tables. Harris Comments at 9

³⁵⁴ According to A/65, the PSIP mandatory tables are: Master Guide Table (MGT); Terrestrial Virtual Channel Table (TVCT); Event Information Tables (EIT-0 to EIT-3); System Time Table (STT); Rating Region Table (RRT). According to A/65, the RRT is not mandatory for the U.S. region (0x01). Transmission of the RRT is not necessary where the content advisory ratings table is fixed, as is the case now in the U.S. If the ratings system were to change, however, or an addition to the ratings system were to be adopted, broadcasters would have to transmit a new RRT in order to transmit the new or additional ratings information. See section IV.J.3., *infra*, for discussion of the RRT.

³⁵⁵ See amended 47 C.F.R. § 73.682(d) in Appendix B.

tables and descriptors that require one time setup should be set correctly, including TSID, Short Channel Name, Service Type, Modulation Mode, Source ID, and Service Location Descriptor. ATSC A/65B also requires that broadcasters send populated EITs covering at least a 12 hour period. These EITs should be populated with the correct information, so that the user knows what programs are on for this 12 hour period. Also, we expect that manufacturers will have every incentive to build equipment that looks to PSIP for its basic functionality, but we will revisit the issue if necessary. Standardized use of the data transmitted through PSIP will ensure that the full benefits and innovations of the new digital system will be available to the public.³⁵⁶

153. *Major/Minor Channel Numbers.* In the *NPRM*, we noted that the ATSC PSIP standard attaches the assignment of "major channel number" values to a broadcaster's current NTSC RF channel number regardless of the actual RF channel used for DTV transmission, and sought comment on whether there was any need to modify this standard.³⁵⁷ For example, a broadcaster who operates an NTSC service on channel 4 and a DTV service on channel 27 would use the major channel 4. The PSIP "minor channel number" is used to identify programs and other services, which are a part of the DTV service. For example, channel 4.1 may be an HDTV program service and it may be multiplexed with an SDTV service, which is channel 4.2. According to ATSC, this allows a viewer to easily "surf" from, for example, 4.0 (NTSC) to 4.1 (HDTV) to 4.2 (SDTV). ATSC, MSTV/NAB, and others state that the major/minor channel number scheme established in ATSC A/65B will be useful.³⁵⁸ ATSC states that the PSIP Standard defines specific requirements for use of "major channel numbers" to provide viewers with a uniform methodology to access DTV services and to avoid conflict with duplicative numbers in a market. The major channel number also allows broadcasters to maintain their local brand identification. We see no reason to modify this standard. During the development of PSIP, ATSC recognized that in some situations broadcasters would need to deviate from the rule that the major channel number is the same as the broadcaster's NTSC channel number and created certain exceptions.³⁵⁹ We agree with ATSC and MSTV/NAB that these exceptions should provide broadcasters with the necessary flexibility to address most circumstances. To the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis. The correct TSIDs must be

³⁵⁶ PSIP enables improvements to program guides, closed captioning, and use of v-chip, and enables channel number navigation using the familiar analog channel numbers to tune to new digital channel assignments.

³⁵⁷ *Second DTV Periodic NPRM*, 18 FCC Rcd at 1321-22 ¶117. See "Program and System Information for Broadcast and Cable," Advanced Television Systems Committee, Doc. A/65B, Rev. B to PSIP for Terrestrial Broadcast and Cable ("ATSC A/65B"), Annex B, Assignment of Major Channel Numbers for Terrestrial Broadcast in the U.S. (Mar. 18, 2003).

³⁵⁸ ATSC Comments at 6; MSTV/NAB Comments at 28; Sharp Comments at 12-13; Harris Comments at 9.

³⁵⁹ See ATSC Program and System Information Protocol, Annex B, Additional Constraints on Virtual Channel Table For the U.S. Exceptions are, for example: (1) if a broadcaster without an NTSC broadcast license applies and receives a license for a digital broadcast channel, the major channel number should be the same as the DTV RF channel; (2) if a broadcaster owns or controls broadcast licenses for two or more different RF channels having overlapping service areas, a common major channel number for all services on all channels may be used; (3) if a broadcaster includes in its DTV service programming originating from a different licensed broadcaster, the major channel number of the original broadcast may be used as long as it is coordinated to avoid conflicts; and, (4) for a translated signal, the major/minor channel numbers shall remain the same as the original broadcast station unless the major channel conflicts with a broadcaster operating in the service area of the translator. In that case, the translator changes the major number to a non-conflicting number. *Id.*

used to ensure that receivers link the analog and digital channels properly. Accordingly, broadcasters are required to transmit the TSIDs assigned for their stations in their digital transmission. During the transition period while both analog and digital signals are broadcast, stations are required to transmit the NTSC TSID in line 21, field 2 in order for the receiver to locate the programs referenced in PSIP.

3. PSIP and DTV V-Chip

154. In the *NPRM* we asked if the Commission needs to do more to ensure that v-chip functionality is available in the digital world. While the Commission's rules require that digital television receivers have the capability to enable viewers to block the display of programs with a common rating, the technical standards to achieve this goal are not specified. We expressed concern that the lack of a specific requirement may lead to confusion among broadcasters and manufacturers with regard to where to place program rating information, resulting in the failure of the blocking functionality that the v-chip provides. Accordingly, we sought comment on whether the Commission should adopt the provisions of the ATSC A/65A standard that requires all digital television broadcasters to place v-chip rating information in the PSIP. We also asked whether it was necessary to require equipment manufacturers to develop equipment that accesses program rating information in the PSIP. Finally, we requested comment on a Petition for Rulemaking filed by CEA which sought to incorporate industry standard EIA/CEA - 766 into the Commission's rules to facilitate v-chip functionality in digital receivers.

155. As an initial matter, we reiterate that this Order adopts the ATSC A/65 PSIP standard in its entirety.³⁶⁰ This Order also requires that broadcasters transmit all mandatory tables and descriptors of PSIP with their digital programming. Accordingly, the Event Information Tables ("EITs") defined within PSIP will contain any available Content Advisory Descriptors ("CADs") for broadcast programming.³⁶¹ This uniform transmission practice will ensure that various receiver manufacturers can more readily design products which will search for and react to program rating information on a consistent basis. Sharp Electronic Corporation states that numerous consumer electronics companies are currently designing and/or selling digital televisions that utilize the content advisory data as defined in the PSIP.³⁶² While we believe that this is indeed the case, we are nonetheless adopting rules to require digital television receivers to look for the content advisory descriptors in the EITs.³⁶³

156. The PSIP carries the Rating Region Table ("RRT"), which describes the content advisory

³⁶⁰ See section IV.J.2., *supra*.

³⁶¹ The PSIP requirements do not mandate broadcaster use of v-chip but rather require that broadcasters that choose to provide v-chip blocking information do so by following the PSIP protocols. For terrestrial broadcast, if parental advisory information is to be provided, the Content Advisory Descriptor is required in the EIT, which is an element of the PSIP Standard. See ATSC A/65B at § 6.9.4; ATSC Comments at 8. See also *Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996: Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd 11248, 11259 (1998) ("V-chip Order"); 47 U.S.C. §§ 303(x), 330(c)(4).

³⁶² See Sharp Comments at 15.

³⁶³ 47 U.S.C. § 330(c) instructs the Commission to oversee "the adoption of standards by industry for blocking technology," and to ensure that blocking capability continues to be available to consumers as technology advances.

rating system being used.³⁶⁴ ATSC in their comment states that: "the PSIP Standard does provide the ability to extend or replace the content advisory system in the U.S. by assignment of a new, different rating region code. Receivers that are built compliant with CEA standards and recommended practices will support an additional new system with one or more independent categories, each with a series of levels definable by a new RRT." Some have expressed concern that the current ratings system is "hard-wired" into digital televisions, making modifications impossible on existing sets.³⁶⁵ We generally believe that the ability to modify the current content advisory system is beneficial. The suggestion by ATSC to use a different US rating region code for any additional new rating system ensures that the older RRT remains intact for legacy digital receivers that have not been designed to process newer versions of the RRT. These legacy digital receivers could continue to be used and would not be rendered obsolete. At the same time, newer digital receivers would be able to recognize and respond to an additional rating system. Accordingly, to ensure the ability to modify the content advisory system, receivers must be able to process newer RRT version numbers or use new rating region codes as suggested by ATSC.³⁶⁶

157. As requested by CEA, we are adopting by reference EIA-766³⁶⁷ U.S. and Canadian Rating Region Tables (RRT). We note that the adoption of the standard will not preclude manufacturers from incorporating additional blocking standards or techniques into receivers.³⁶⁸ Therefore, additional blocking techniques that are dependent only on inputs such as the date, time of day, or television channel, may be incorporated into television receivers as manufacturers see fit.

158. Additionally, we are adopting our proposal to apply v-chip rules to digital television receivers with displays in the 16:9 aspect ratio that are 7.8 inches or greater in height. Furthermore, we are requiring that v-chip technology be included in all digital television receivers with integrated 4:3 displays measuring at least 13 inches diagonally.³⁶⁹ Similar to our requirements for closed caption capabilities in digital television receivers, the rules will also be applicable to DTV tuners which are sold without an associated display device.³⁷⁰

159. Finally, we are inclined to provide a transition period for manufacturers to begin producing compliant digital television receivers. We understand that the design cycle of a television receiver model is generally about 18 months. The Commission has previously taken into consideration

³⁶⁴ Without the information in the RRT, the program rating icons (e.g., TV-Y7 or PG-13) will be displayed, but the explanations of the icons will not.

³⁶⁵ See Tim Collings Comments at 2-4, Letter from Tim Collings to Marlene Dortch, FCC, dated October 24, 2003 at 2. See also Letter from Rep. Edward J. Markey to Chairman Michael K. Powell, FCC, dated January 29, 2003.

³⁶⁶ 47 U.S.C. § 330(c)(4). See also amendment to 47 C.F.R. § 15.120(d) in Appendix B.

³⁶⁷ EIA-766 specifies the exact syntax to be used to define the US and Canadian RRTs in accordance with A/65, as well as exact syntax to be used for the CADs that convey the rating information.

³⁶⁸ See Tim Collings Comments at 2.

³⁶⁹ 47 U.S.C. § 303(x).

³⁷⁰ *Closed Captioning Requirements for Digital Television Receivers*, 15 FCC Rcd 16788, 16805 ¶ 47 (2000) ("DTV Closed Captioning Order").

receiver design cycles in proceedings that required the introduction of new television technology.³⁷¹ We also understand that many manufacturers are currently relying on EIA 766 to comply with the Commission's v-chip requirements as applied to digital receivers.³⁷² Our existing requirement that digital television receivers react in a similar manner as analog televisions when programmed to block specific rating categories ensures that digital receivers will continue to respond to v-chip information during the phase-in period. Therefore, we believe it is reasonable to provide an 18 month transition period. After the transition period, all digital television receivers will be required to provide v-chip functions following the regulations that we adopt in this proceeding.

4. PSIP and LPTV/TV Translators

160. We also requested comment on issues concerning the implications of PSIP on the operation of TV translator facilities. We requested comment on how the proper PSIP information is to be provided on TV translator rebroadcasts and who will be responsible for ensuring that that information is provided. We also requested comment regarding the costs of providing PSIP information on TV translators as well as any other concerns that translator operators might have in implementing PSIP on their DTV operations.³⁷³ We received comments from CEA, ATSC, Public Television, and Harris in response to our questions. In August 2003, the Commission initiated a proceeding to examine issues related to the authorization of digital translators and boosters.³⁷⁴ Because the record will be more specifically tailored to LPTV, translators, and boosters, we will address the implications of PSIP on those facilities in connection with the *Digital LPTV* proceeding.

K. DTV Closed Captioning

161. The Television Decoder Circuitry Act of 1990 requires generally that television receivers contain circuitry that is able to decode and display closed captioning.³⁷⁵ The Act also directs the Commission to take such action that it determines appropriate to ensure that closed captioning service continues to be available to consumers as new technology is developed.³⁷⁶ In accordance with the Act, in July, 2000, the Commission adopted regulations with regard to the functioning of digital television

³⁷¹ See, e.g., *V-Chip Order*, 13 FCC Rcd at 11256-57 ¶¶ 21-24; *DTV Closed Captioning Order*, 15 FCC Rcd at 16807-08 ¶¶ 54-58.

³⁷² See *Expedited Petition for Rulemaking*, filed in ET Docket No. 97-206, RM 9832 (Jan. 12, 2000) at 3. A copy of this Petition for Rulemaking has been included in the docket of this proceeding.

³⁷³ We further note that a similar issue arises with cable service when a broadcast DTV signal or its associated analog signal is carried on a cable system on a channel that is different from its broadcast signal. PSIP in the context of cable carriage is a topic in a pending proceeding, *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598, 2635 (2001) (petitions for reconsideration pending).

³⁷⁴ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 18 FCC Rcd 18365 (2003) ("Digital LPTV Notice").

³⁷⁵ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

³⁷⁶ 47 U.S.C. § 330(b).

receivers and closed captioning services.³⁷⁷ The *DTV Closed Captioning Order* incorporated Section 9 of the EIA/CEA standard EIA-708-B with minor modifications into the Commission's rules. This industry standard provides guidelines for caption providers as well as encoder and decoder manufacturers to implement closed captioning services with digital television technology. The *DTV Closed Captioning Order* also amended Section 79.1 of the Commission's regulations to require an increasing amount of digital programming to be captioned in a format that can be recovered and displayed by decoders meeting the EIA-708-B standard.³⁷⁸

162. As part of *Second DTV Periodic NPRM*, the Commission sought comment on whether there was additional action that it should take to ensure the accessibility and functioning of closed captioning service for digital television.³⁷⁹ Several commenters asserted that some issues need to be clarified in order for closed captioning services to be consistently and effectively delivered.³⁸⁰ For example, NCAM contends that in some cases broadcasters may not be delivering true DTV caption data intended for digital television receivers. Instead, those broadcasters are delivering NTSC type data, intended for use when digital programming is down-converted for display on analog receivers. NCAM states that, without DTV captioning data, digital receivers may not be able to function in the manner in which the Commission intended. In fact, some of these receivers may not display any captions at all.³⁸¹

163. We note that the EIA-708 standard provides comprehensive instructions for the encoding, delivery, and display of closed caption information for digital television systems. The standard provides for a larger set of captioning characters than the analog captioning standard, EIA-608. However, EIA-708 also supports transport of the analog EIA-608 captioning information for use when a digital broadcast is being viewed on an analog receiver through a DTV converter. The rules adopted in the *DTV Closed Captioning Order* were intended to require that the decoder circuitry in digital tuners respond primarily to any digitally formatted caption information. Accordingly, consumers who purchase DTV receivers will be confident that they will be able to take advantage of the new capabilities of captioning in the digital environment. Therefore, we hereby clarify that digital television receivers must first search for and respond to native EIA-708 closed caption information. Only if that information is not available in the DTV datastream should the receiver search for any available transcoded analog captioning data conforming to the EIA-608 standard. Furthermore, broadcasters should be aware that receivers will be searching for EIA-708 data in all digital broadcasts. If digital programming is to be captioned, it must contain EIA-708 data.³⁸² This applies to all digital broadcast programming, regardless of whether the programming is delivered in standard definition or high definition.

³⁷⁷ See *DTV Closed Captioning Order*, 15 FCC Rcd 16788 (2000); 47 C.F.R. § 15.122(b) (incorporating by reference EIA-708-B, "Digital Television (DTV) Closed Captioning," Electronics Industries Alliance (Dec. 1999) ("EIA-708-B")).

³⁷⁸ 47 C.F.R. § 79.1.

³⁷⁹ See *Second DTV Periodic NPRM*, 18 FCC Rcd at 1322, ¶119.

³⁸⁰ See generally comments of MSTV/NAB; The CPB/WGBH National Center for Accessible Media (NCAM); CEA; and Sharp Electronics.

³⁸¹ See NCAM Comments at 3.

³⁸² See 47 C.F.R. § 15.122(b).

164. In the *DTV Closed Captioning Order*, the Commission observed that viewers will be able to watch digital programming on existing analog displays by using a DTV converter. With regard to the broadcasters' responsibility to deliver closed caption data, the *DTV Closed Captioning Order* states that, "[I]n order for programming distributors to count captioned digital television programming toward their closed captioning requirements in 47 C.F.R. Section 79.1, they must also transmit captions that can be decoded by the decoder in that analog set."³⁸³ Therefore, while all captions supplied with new digital programming should conform to the standards for "native" EIA-708 style captions as detailed in the standard, analog captions must also be provided if a broadcaster wishes to count the programming towards its quarterly captioning requirements.³⁸⁴

165. In the *Second DTV Periodic NPRM* we noted that at the time the *DTV Closed Captioning Order* was adopted the Commission had not made broadcasters' adherence to the ATSC A/65 (PSIP) standard a requirement. We stated that the standard requires the caption service descriptor to be in the EITs and makes optional the presence of the caption service descriptor in the Program Mapping Table (PMT). EIA-708 standard requires the caption service descriptor to be in the PMT and, when present, in the EITs. We questioned whether a requirement for all digital television broadcasters to place the caption service descriptor in the EITs alone would eliminate situations in which digital television receivers that search for closed captioning information in the EITs are not able to find any captioning information although it is present in the PMT according to EIA-708. We believe that our decision to adopt the PSIP standard in its entirety along with the previous adoption of the EIA-708 results in the caption service descriptor being present in both EITs and in the PMTs. This proposal to require the caption service descriptor to be present in both places will insure that legacy digital receivers that have been designed according to EIA-708 alone could continue to find the caption service descriptor in the PMT and would not be rendered obsolete.

L. DTV Labeling Requirements and Consumer Awareness

166. The *Second DTV Periodic NPRM* requested comment on the need for labeling requirements to provide consumers with information on the capabilities of digital television equipment at the point of sale.³⁸⁵ We noted that a General Accounting Office ("GAO") Report to Congress in 2002 found that at least 40 percent of the public was unfamiliar with the digital transition,³⁸⁶ and 68 percent of those surveyed did not know that when the transition ends, consumers with analog-only sets will be unable to continue receiving over-the-air broadcast television without use of an external digital tuner or converter.³⁸⁷ In addition, we sought comment on whether to require a disclosure label on analog-only sets or a digital conversion fact sheet to inform consumers that a converter or external DTV tuner will be

³⁸³ *DTV Closed Captioning Order*, 15 FCC Rcd at 16809, ¶ 63.

³⁸⁴ See 47 C.F.R. § 79.1.

³⁸⁵ *Second DTV Periodic NPRM*, 18 FCC Rcd at 1314-15, ¶¶ 95-98.

³⁸⁶ See "TELECOMMUNICATIONS: Additional Federal Efforts Could Help Advance Digital Television Transition," General Accounting Office Report, GAO-03-7, Nov. 2002 ("GAO Report") at 15.

³⁸⁷ Only 14 percent of those surveyed by the GAO were "very familiar" with the difference between analog and digital televisions. GAO speculates that even this number may be high because consumers may be confusing current digital television services provided by cable or satellite with DTV. GAO Report at 16 and n.12.

needed to ensure reception of television broadcast signals after stations in the consumer's market complete conversion to digital-only broadcasting.

167. In the first DTV periodic review proceeding, we sought comment on whether we should require digital television equipment that cannot receive over-the-air digital broadcast signals to carry a label informing consumers of this limitation on the receivers' functionality.³⁸⁸ In the *DTV Tuner Order*, we observed that the reluctance of the public to buy digital receivers is the problem with reaching the 2007 target date for completing the transition.³⁸⁹ We required that all TV receivers with screen sizes greater than 13 inches manufactured in the U.S. after July 1, 2007 be capable of receiving DTV signals over-the-air.³⁹⁰ As DTV tuners reach the market, consumers will only buy them if they understand what they are and that the future utility of analog-only televisions is limited. We decided not to require in that proceeding that television receivers that cannot receive over-the-air digital broadcast signals carry a label informing consumers of this limitation but we resolved to monitor the marketplace and take steps as necessary to protect consumers' interests.³⁹¹

168. Accurate communication of the impending change from analog to digital transmission is a highly material disclosure for consumers contemplating the purchase of a television.³⁹² We believe, as retailers and manufacturers agree, that communicating product attributes and features spur sales. We agree with Thompson that it is important to use the same nomenclature and definitions industry-wide.³⁹³ CEA has developed uniform nomenclature that appears in its Consumer Guide to HDTV,³⁹⁴ but the labeling recommended has not been adopted by manufacturers and retailers on a widespread basis.³⁹⁵

³⁸⁸ See *First DTV Periodic Report and Order*, 16 FCC Rcd at 5986, ¶ 111.

³⁸⁹ *DTV Tuner Order*, 17 FCC Rcd at 15990, ¶ 27; See also *Consumer Electronics Association v. Federal Communications Commission*, 347 F.3d 291 (D.C. Cir. 2003).

³⁹⁰ *DTV Tuner Order*, 17 FCC Rcd at 15996, ¶ 40.

³⁹¹ *Id.* at ¶ 59.

³⁹² Retailers sell analog-only televisions for over \$500 without prominent disclosure that they will not receive television signals without additional equipment after the analog spectrum is returned. See, e.g., 30" Phillips, widescreen aspect ratio, "ideal for DVD" for \$599 at Best Buy, <<http://www.bestbuy.com/site/olspage.jsp?id=1051826211193&skuld=5421368&type=product&productCategoryId=cat03002>>.

³⁹³ Thompson Reply at 8 (e.g., "HDTV Sets" means "devices with HDTV displays and integrated DTV receivers" and "HDTV Monitors" means devices that require a separate receiver).

³⁹⁴ See "A Consumer's Guide to the Wonderful World of HDTV" in CEA *ex parte* filed Dec. 23, 2003.

³⁹⁵ For example, Best Buy offers "HD-Ready" televisions, which is not a term defined in CEA's consumer guide. Best Buy's website defines it as "Fully capable of high-definition display when connected to an optional HDTV source. Conventional analog TV reception is provided via a built-in NTSC tuner." The prices for such "HD-Ready" televisions range from \$999.99 (Samsung) to \$1999.99 (Toshiba). See <<http://www.bestbuy.com/site/olspage.jsp?id=1051826206574&skuld=5341784&type=product&cmp=percent20percent20>> (viewed January 29, 2004). See also Best Buy's Samsung "HD Built-in Digital TV" for \$1099.99 at <<http://www.bestbuy.com/site/olspage.jsp?id=1069302293832&type=product>> ("Built-in HDTV tuner allows you to receive over-the-air high-definition broadcasts where available (HD-capable antenna required). Optional set-top box required for reception of high-definition cable or satellite programming.")

Recent *ex parte* filings indicate that the relevant industries, manufacturers and some retailers, are working on improved sales materials and clear, standard terminology and an increasing amount of information available for consumers who research on the Internet or in industry publications.³⁹⁶ However, much of the mass advertising and point of sale information remains confusing, inconsistent, and lacks explanation of the eventual limitations on analog-only equipment.³⁹⁷ We have been reluctant to require specific labeling and expected that manufacturers and retailers would develop consistent, clear and uniform terminology to convey to consumers prior to purchase the features and limitations of television products, such as a chart of available features with "Yes" or "No" or checkmark indicated for each feature, including whether the equipment is analog-only and will require additional equipment to receive television signals after the transition.³⁹⁸ We are working with the parties and consumer organizations to develop materials and techniques for consumer education.³⁹⁹ Therefore, at this time, we will not determine whether it is necessary for the Commission to require labeling. We will reserve that determination for further consideration in the Second Report and Order in the Second DTV Periodic Review, which will address the interpretation of Section 309(j)(14).

M. DTV Station Identification

169. Under our current rules, television stations are required to make station identification announcements at the beginning and end of each time of operation as well as hourly.⁴⁰⁰ Official station identification may be made visually or aurally, and must consist of the station's call letters immediately followed by the community or communities specified in the station's license as the station's location.⁴⁰¹ Either or both the name of the licensee and the station's channel number may be inserted between the call letters and the station location, but no other insertion is permissible.⁴⁰²

170. In the *Second DTV Periodic NPRM* we proposed to require digital television stations to follow the same rules for station identification as analog television stations. The few commenters that

³⁹⁶ See, e.g., CERC *ex parte* (Apr. 29, 2004).

³⁹⁷ For example, a sign or cling label displayed at point of sale could say: "Analog only - Not digital; will need separate converter box for over-air reception."

³⁹⁸ See, e.g., Ronald Brey Comments at 4-5 (checklist grid attached to the screen distinguishing HDTV from analog and over-the-air reception from cable or satellite).

³⁹⁹ A chart format could be developed based on CEA's consumer guide, that describes the resolution and aspect ratios for HDTV, EDTV and SDTV and lists them as "Best, Better, Good." See CEA *ex parte* filed Dec. 23, 2003 at 10.

⁴⁰⁰ 47 C.F.R. § 73.1201(a). Section 73.1705 ("Time of Operation") of the FCC's rules specifies whether commercial and noncommercial TV and radio stations may be licensed for unlimited time operation, share time operation, and/or specified hours operation (such as daytime-only). 47 C.F.R. § 73.1705.

⁴⁰¹ 47 C.F.R. § 73.1201(b). Digital television stations have been assigned the same call letters as their associated analog TV stations, except that the digital station is identified with the suffix "DT."

⁴⁰² *Id.* Television satellite stations must include in their station identification announcements the number of the channel on which each station is operating. 47 C.F.R. § 73.1201(c)(3)(i).

addressed this issue generally support this proposal.⁴⁰³ Thomas C. Smith ("Smith") notes that many stations now are simply passing through digital programs provided by the network and may not have the ability at this point to add a local identification to their program stream.⁴⁰⁴ Smith states that in the future, however, stations should be required to do a local identification at regular intervals. WDLP Broadcasting Co., LLC ("WDLP") argues that the Commission should permit maximum flexibility with respect to DTV station identification. This commenter argues that the Commission should permit DTV stations to identify themselves using, for example, the station's network affiliation and channel number followed by the community of license, but without the station's call letters.⁴⁰⁵ Smith also notes that some stations promote the channel number or the channel number and network affiliation together, while others promote the station's call letters.⁴⁰⁶

171. We will adopt our proposal and require digital television stations to follow the same rules for station identification as analog television stations. Thus, digital stations will be required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. As with analog stations, we will require that the identification consist of the station's call letters followed by the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion. We will not adopt the proposal of WDLP to permit stations to omit the station's call letters in their identification. Each station's call letters are unique; thus, call letters serve as the clearest means of distinguishing among stations. As stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for viewers and for stations themselves.

172. If a station chooses to include its channel number in its station identification, we will require that the station use the major (analog) channel number. As discussed above, we have decided to adopt the ATSC A/65B standard into our rules.⁴⁰⁷ One of the most important benefits of PSIP is that it defines specific requirements for use of "major" channel numbers to provide viewers with a uniform methodology to access DTV services and avoid conflict with duplicative numbers in a market. PSIP will allow viewers to see a broadcaster's major channel number regardless of the broadcaster's allocated digital broadcast channel. Thus, PSIP allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers. We believe that it is consistent with our adoption of the PSIP standard into our rules to require stations

⁴⁰³ See Thomas C. Smith Comments at 5 (stating that station identifications are helpful to both the viewer and the station and should not be a burden to the station); WDLP Broadcasting Co., LLC at 7 (noting that the purpose of the station identification rule is to let the public know the essential identity of the station so the viewer can contact that station or the FCC about its programming).

⁴⁰⁴ See Thomas C. Smith Comments at 5.

⁴⁰⁵ See WDLP Comments at 8.

⁴⁰⁶ See Thomas C. Smith Comments at 5.

⁴⁰⁷ See section IV.J.2., *supra*.

electing to identify themselves by channel number to use their major channel number, which is defined in the PSIP standard as the broadcaster's current NTSC RF (analog) channel number. Thus, a broadcaster who operates an NTSC service on channel "26" and a DTV service on channel "27" would use the major channel "26" in station identification announcements. We will permit stations that choose to multicast to include additional information in their station announcements identifying each program stream. Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV) and 26.2 (SDTV). Stations may also provide information in the station announcement identifying the network affiliation of the program service (e.g., "WXXX-DT, channel 26.1, YYY (community of license), your WB network channel").

173. For stations simulcasting their analog programming on the digital channel, we will permit station identification announcements to be made simultaneously for both stations as long as the identification includes both call signs (e.g., "WXXX-TV and WXXX-DT") if it is intended to serve as the identification for both stations.⁴⁰⁸ If they chose to make simultaneous identifications for more than one channel, stations should ensure that these announcements are adequate to identify both program streams.

N. Distributed Transmission Technologies

174. In the *Second DTV Periodic NPRM* we sought comment on whether we should provide for DTV stations using distributed transmission technologies.⁴⁰⁹ A DTV distributed transmission system would employ multiple synchronized transmitters spread around a station's service area. Each transmitter would broadcast the station's DTV signal on the same channel, relying on the performance of "adaptive equalizer" circuitry in DTV receivers to cancel or combine the multiple signals plus any reflected signals to produce a single signal. Such distributed transmitters could be considered to be similar to analog TV booster stations, a secondary, low power service used to "fill in" holes in the parent station's coverage area, but DTV technology has the potential to enable this type of operation in a much more efficient manner.⁴¹⁰ For analog TV boosters, in contrast, significant self-interference will occur unless there is substantial terrain blocking the arrival of multiple signals into the same area (for example, one signal from the primary analog station directly and one signal from a booster station).

175. In addition to the fundamental question of whether to allow distributed transmission technology, we sought comment on many related issues, such as whether such facilities should have primary or secondary regulatory status, whether we should limit the location of or area served by distributed transmitters, how interference to and from such transmitters should be calculated, and what power, antenna height, or other technical standards or limits should be imposed.

176. Commenting parties generally support use of this technology. In particular, Merrill Weiss Group ("Weiss") is a strong proponent of distributed transmission technology, citing its potential

⁴⁰⁸ Our rules currently allow co-owned AM/FM radio stations licensed to the same community simultaneously broadcasting the same programming on both stations to make joint station identification announcements for both stations. 47 C.F.R. § 73.1201(c)(2).

⁴⁰⁹ See *Second DTV Periodic NPRM*, 18 FCC Rcd at 1415-1317, ¶¶ 99-105.

⁴¹⁰ The Commission's Spectrum Policy Task Force has recommended that digital television broadcasters be permitted to operate single frequency low power distributed transmission systems within their present service areas. See *Spectrum Policy Task Force Report*, ET Docket No. 02-135, at p. 64 (rel. Nov. 2002).

for improving spectrum efficiency by enabling increased levels of service while maintaining or reducing the levels of interference.⁴¹¹ Weiss also indicates that urban area service can be improved where higher signal levels are made available from multiple directions, which can enable reception with set-top antennas instead of roof-mounted antennas. Weiss claims that distributed transmission systems will often use shorter towers that may avoid zoning problems and that they can be located to overcome obstacles of rough terrain in some markets and urban canyons in others. Finally, Weiss suggests that distributed transmitters can help make a staged rollout of maximized service possible. MSTV/NAB support quick Commission action to allow distributed transmission systems, either in this proceeding or in a separate "fast track" proceeding.⁴¹² Others specifically support Weiss, including Axcera, a manufacturer of transmitters and related equipment, WPSX/Penn State Public Broadcasting, which has an experimental authorization to test distributed transmission technology, and Tribune Broadcasting Company and Golden Orange Broadcasting, TV licensees that face specific situations where they may want to use distributed transmission technology.⁴¹³ Others, such as transmission equipment manufacturer Harris Corporation and Siete Grande Television, Inc., which operates four analog channel 7 transmitters covering different parts of Puerto Rico, also support allowing DTV distributed transmission systems.⁴¹⁴ Ronald Brey and Thomas C. Smith express concern that not enough is known about the performance of distributed transmission technology and that increased interference could be caused.⁴¹⁵

177. We agree with the generally supportive comments that the technology has potential benefits to the public and the reported testing to date is encouraging. Thus, in principle, we approve of the use of DTS technology. As suggested by MSTV/NAB, we will soon open a separate "fast track" proceeding to propose rules for DTS operation and to develop an adequate record on several technical and policy issues related to its use. In that proceeding, we will address the regulatory status of DTS facilities, limitations on where DTS facilities can provide service, and how DTS facilities are treated from the standpoint of interference they would be predicted to cause to other broadcast stations and interference they would receive from other stations. In addition, we will consider policy issues such as how to avoid situations where stations could fail to serve significant populations within their nominal coverage area and how stations employing DTS facilities should be evaluated with respect to meeting replication and maximization deadlines.

178. While that DTS proceeding is conducted, we will allow stations to request DTS operation on a case-by-case basis based on conservative parameters. Specifically, interim DTS operations will not be allowed if they would provide predicted service beyond a station's currently authorized area (including its replication area as well as any maximization area resulting from facilities granted by a construction permit or license). An interim DTS proposal will only be approved if it is

⁴¹¹ See Weiss Comments at 10.

⁴¹² See MSTV/NAB Comments at 32.

⁴¹³ See Axcera Reply at 5; Tribune Reply at 4; Golden Orange Broadcasting Reply at 1; WPSX/Penn State Public Broadcasting Reply at 1.

⁴¹⁴ See Harris Comments at 6; Siete Grande Comments at 8.

⁴¹⁵ See Brey Comments at 5; Thomas C. Smith Comments at 5.

designed to serve essentially all of its replication coverage area.⁴¹⁶ A station's desire to explore DTS operation will not be acceptable grounds for it requesting an extension of the replication and maximization interference protection deadline. Beyond these decisions, our staff will determine on a case-by-case basis the adequacy of other aspects of proposed operation (including permissible power, antenna height, and the acceptability of interference showings). We note that the record in this proceeding does not reflect current successful and practical operation of DTS technology. We will authorize additional experimentation and development work through our Special Temporary Authority (STA) process. Operation under such authority will be allowed to continue while we conduct the rule making proceeding. Depending upon the outcome of that proceeding, we may then convert the STAs to regular authorizations.

V. PROCEDURAL MATTERS

179. *Accessibility Information.* Accessible formats of this *Report and Order* (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

180. *Paperwork Reduction Act of 1995 Analysis.* This *Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission is requesting OMB approval under the emergency processing provisions of the 1995 Act (5 C.F.R. §1320.13) of the information collection requirements and forms contained in this *Report and Order*. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

181. Written comments by the public on the proposed information collection(s) are due 60 days from date of publication of this *Report and Order* in the Federal Register. Written comments must be submitted by the public, Office of Management and Budget and other interested parties on the proposed information collection(s) on or before 60 days from date of publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith F. Herman, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW, Washington, DC 20503, or via the Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202-395-5167.

182. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act,⁴¹⁷ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth in **Appendix C**.

⁴¹⁶ An acceptable application during this interim period must show that all viewers within the station's replicated service area who are predicted to be served by their current analog transmitter would likewise be predicted to receive the minimum signal strength from at least one DTT transmitter.

⁴¹⁷ See 5 U.S.C. § 604.

VI. ORDERING CLAUSES

183. **IT IS ORDERED** that pursuant to the authority contained in Sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) that this Report and Order IS ADOPTED and the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B, and shall become effective 30 days after publication in the Federal Register except that rule section 47 C.F.R. § 73.1201 that contains information collection requirements under the PRA is not effective until approved by OMB. The FCC will publish a document in the Federal Register announcing the effective date for this section.

184. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to implement the electronic Channel Election Forms and the specific dates adopted in this Order.

185. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

186. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

**APPENDIX A
LIST OF COMMENTERS**

A. Leading Comments

1. A&E Television Networks
2. Access Spectrum, LLC
3. Advanced Television Systems Committee
4. Alaska Broadcasters Association, et al.
5. Aloha Partners, L.P.
6. American Cable Association
7. American Corn Growers Association, (Larry Mitchell)
8. Association for Maximum Service Television/NAB
9. Association of Public-Safety Communications Officials-International, Inc. (APSCO)
10. Association of Public Television Stations, The Corporation for Public Broadcasting and The Public Broadcasting Service (Public Television)
11. BELO Corp.
12. Block Communications, Inc.
13. Brey, Ronald J.
14. Capitol Broadcasting Company, Inc.
15. Cavlier Group, LLC (Withdrawn)
16. Channel 3 of Corpus Christi, Inc.
17. Civil Rights Organizations (Minority Media and Telecommunications Council)
18. Cohen, Dippell and Everist, P.C.
19. Collings, Tim
20. Comcast Corporation
21. Community Broadcasters Association (CBA)
22. Communications Corporation of America (CCA)
23. Consumer Electronics Association (CEA)
24. Consumer Electronics Retailers Coalition (CERC)
25. Consumer Federation of America
26. Cordillera Communications, Inc.
27. Courtroom Television Network LLC
28. Cox Broadcasting, Inc.
29. CPB/WGBH National Center for Accessible Media (NCAM)
30. Crown Castle USA, Inc.
31. DataCom Wireless, LLC
32. Davis Television Wausau, LLC
33. Eastern Television Corporation (ETC)
34. Flarion Technologies
35. Federman, Joel Ph.D.
36. Harbor Wireless, LLC
37. Harris Corporation
38. HDNet, LLC
39. Hubbard Broadcasting, Inc.
40. Kaiser, Henry J. Family Foundation
41. Kanokla Telephone Association, Inc., et al (KanOkla)
42. KM Communications, Inc. et al.
43. LeSEA Broadcasting Corporation
44. Media General Communications, Inc.

45. Merrill Weiss Group, LLC (S. Merrill Weiss)
46. Motorola, Inc.
47. National Broadcasting Company, Inc. (NBC) and Telemundo Group, Inc.
48. National Association of Farmers Elected Committees (NAFEC), (Paul Clark)
49. National Cable & Telecommunications Association
50. National Minority T.V., Inc.
51. Paxson Communications Corporation
52. Preston, Eugene G. PhD EE
53. Public Safety Wireless Network
54. Sharp Electronics Corporation
55. Siete Grande Television, Inc.
56. Sinclair Broadcast Group, Inc.
57. Smith, Thomas C.
58. Statewide Wireless Network, New York State, Office for Technology, State Capitol, ESP
59. Thomson, Inc.
60. Walt Disney Company and The ABC Television Network
61. WatchTV, Inc.
62. WDLP Broadcasting Co., LLC
63. WHYY, INC.
64. WLNY-TV, Inc.

B. Leading Reply Comments

1. A&E Television Networks
2. Aloha Partners, L.P.
3. Association for Maximum Service Television/NAB
4. Axcera, LLC
5. Cavalier Group, LLC
6. Children's Media Policy Coalition
7. Collings, Tim
8. Consumer Electronics Association
9. Courtroom Television Network LLC
10. Cox Broadcasting, Inc.
11. DIRECTV, Inc.
12. Everist, Donald G.
13. Golden Orange Broadcasting Co., Inc.
14. Harris Corporation
15. LIN Television Corporation
16. McBride Spectrum Partners, LLC
17. McBride, Vincent D.
18. MTC North, Inc.
19. National Cable & Telecommunications Association
20. National Public Safety Telecommunications Council
21. Paxson Communications Corporation
22. Red River Broadcast Co., LLC
23. Rural 700 MHz Band Licensees
24. Thomson Inc.
25. Tribune Broadcasting Company
26. WPSX/Penn State Public Broadcasting
27. Zenith Electronics Corporation

C. Leading Ex Parte or Late-Filed Comments

1. Association for Maximum Service Television, Inc.
2. Association of Public Television Stations
3. Block Communications, Inc
4. Campaign Legal Center
5. Capitol Broadcasting Co., Inc
6. Center for the Creative Community
7. Children's Media Policy Coalition
8. Collings, Tim
9. Consumer Electronics Association
10. CPB/WGBH National Center for Accessible Media
11. Dielectric Communications
12. Harris Corporation
13. Fireweed Communications LLC
14. Media Access Project
15. MTC North, Inc
16. Philips Electronics North America Corporation
17. Sinclair Broadcast Group Inc.
18. Sony Electronics Inc.
19. Starz Encore Group LLC
20. Thomson Inc.
21. Waddell, J. Patrick
22. WLNY-TV, Inc.

**APPENDIX B
RULE CHANGES**

PART 15--RADIO FREQUENCY DEVICES

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.38, paragraph (b) is amended by adding subsections (13) and (14) as follows:

§ 15.38 Incorporations by reference.

(b)

(13) EIA-766-A: "U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP)," 2001, IBR approved for §15.120.

* * * * *

3. Section 15.120, paragraph (c) subsection (2) is amended by revising it to read as follows:

§15.120 Program blocking technology requirements for television receivers.

(c) Transmission Format.

(2) Digital television program rating information shall be transmitted in digital television signals in accordance with § 73.682(d) of this chapter.

* * * * *

4. Section 15.120, paragraph (d) subsection (2) is amended by revising it to read as follows:

§15.120 Program blocking technology requirements for television receivers.

(d) Operation.

(2) Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Effective March 15, 2006, digital television receivers will receive program rating descriptors transmitted pursuant to industry standard EIA/CEA -766-A "U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP)," 2001 (incorporated by reference, see §15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to changes in the content advisory rating system.

* * * * *

PART 27 -- MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Part 27 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.60, paragraph (b) subsection (1)(iii) is amended by revising it to read as follows:

§ 27.60(b)(1)(iii) TV/DTV interference protection criteria.

* * * * *

(iii) submit an engineering study justifying the proposed separations based on the parameters of the land mobile station and the parameters, including authorized and/or applied for facilities, of the TV/DTV station(s) it is trying to protect; or,

* * * * *

PART 73 -- RADIO BROADCAST SERVICES

1. The authority for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.624 is amended to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(b) DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel. Until such time as a DTV station permittee or licensee ceases analog transmissions and returns that spectrum to the Commission, and except as provided in paragraph 1 of this section, at any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal on the DTV channel. The DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel.

(1) DTV broadcast station permittees and licensees required to construct and operate a DTV station by May 1, 2002, or May 1, 2003, pursuant to paragraph (d) of this section must, at a minimum, beginning on the date on which the DTV station is required to be constructed, provide a digital video program signal, of the quality described in paragraph (b) above, during prime time hours as defined in § 79.3(a)(6) of this chapter. These licensees and permittees must also comply with the minimum operating hours requirements in paragraph (f) of this section.

(f)(i) Commencing on April 1, 2003, DTV television licensees and permittees required to construct and operate a DTV station by May 1, 2002, or May 1, 2003, must transmit at least one over-the-air video program signal at no direct charge to viewers on their DTV channel at least 50 percent of the time they are transmitting a video program signal on their analog channel.

(ii) Commencing on April 1, 2004, DTV licensees and permittees described in paragraph (f)(i) must transmit a video program signal as described in paragraph (f)(i) on the DTV channel at least 75 percent of the time they are transmitting a video program signal on the analog channel.

(iii) Commencing on April 1, 2005, DTV licensees and permittees described in paragraph (f)(i) must transmit a video program signal as described in paragraph (f)(i) on the DTV channel at least 100 percent of the time they are transmitting a video program signal on the analog channel.

(iv) The minimum operating hours requirements imposed in paragraphs (f) (i)-(iii) of this section will terminate when the analog channel terminates operation and a 6 MHz channel is returned by the DTV licensee or permittee to the Commission.

3. Section 73.682 is amended by revising paragraph (d) to read as follows:

§ 73.682 TV transmission standards.

(d) Digital broadcast television transmission standard. Effective [120 days after publication in the Federal Register] transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: "ATSC Standard Digital Audio Compression (AC-3)" (incorporated by reference, see § 73.8000), ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2: "ATSC Digital Television Standard," except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table 3" in Section 5.1.1. Table 2 and Section 5.1.2 Table 4 (incorporated by reference, see § 73.8000), and ATSC A/65B: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," 2003. (incorporated by reference, see § 73.8000) Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, (Oct. 4, 1995), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002). (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

4. Section 73.1201 is amended to read as follows:

§ 73.1201 Station identification

(b) *Content.* (1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; *Provided*, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and

station location. DTV stations choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

(c) *Channel.* (1) *General.* Except as otherwise provided in this paragraph, in making the identification announcement the call letters shall be given only on the channel, or channels in the case of a broadcaster that is multicasting more than a single channel, identified thereby.

5. Section 73.8000, is amended by revising paragraph (b) subsections (2) and (3) as follows:
§ 73.8000 Incorporation by reference.

(b) ***

(2) ATSC A/53B: "ATSC Digital Television Standard," 1995, Amendment 1 and Amendment 2, IBR approved for § 73.682, except for section 5.1.2 of Annex A, and the phrase "see Table 3" in section 5.1.1. Table 2 and section 5.1.2 Table 4.

(3) ATSC A/65B: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," 2003, IBR approved for § 73.682, IBR approved for §§ 73.9000-73.9001.

PART 90--PRIVATE LAND MOBILE RADIO SERVICES

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.545, paragraph (c) subsection (1)(ii) is amended by revising it to read as follows:

§ 90.545 (c)(1)(ii) TV/DTV interference protection criteria.

(ii) submit an engineering study justifying the proposed separations based on the parameters of the land mobile station and the parameters, including authorized and/or applied for facilities, of the TV/DTV station(s) it is trying to protect; or,

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),⁴¹⁸ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making* ("NPRM").⁴¹⁹ The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. One comment was received on the IRFA and is discussed below. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.⁴²⁰

2. **Need for and Objectives of the Report and Order.** The policies and rules set forth herein are required to ensure a smooth transition of the nation's television system from analog to digital format. In the Commission's DTV proceeding (MM Docket No. 87-268), the Commission stated its intention to hold periodic reviews of the progress of the digital conversion and to make any adjustments necessary to our rules and policies to "ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest."⁴²¹ In this second periodic review, we revisit, as we indicated we would, several issues addressed in the first periodic review, and address a number of additional issues that we consider essential to resolve in order to ensure continued progress on the digital transition. The objective of this second periodic review is to make adjustments to our rules and policies to facilitate the introduction of digital television and the recovery of spectrum at the end of the transition.

3. Foremost among the steps taken in this item, the Report and Order establishes the timing and procedures necessary to establish a new Table of DTV Allotments that will determine the post-transition channels for all digital stations. Specifically, the item commences a three-round channel election process in the fall of 2004. Licensees are encouraged to ensure accuracy of database technical information on-file with the Commission before October 1, 2004. The Commission will issue a Table of Station Information (based on licensees' on-file database information) so that station licensees will know the DTV service populations to be used in the channel election process. In November 2004, the channel election process begins with all stations certifying their database technical information; and certifying intent to replicate or maximize on their post-transition channel. In December 2004, round one begins and station licensees with two in-core (channels 2-51) channels elect the channel they prefer to retain for digital broadcasting, and licensees with one in-core and one out-of-core (channels 52-69) channel elect whether to use their in-core channel for post-transition digital operation. In round two, expected in July 2005, station licensees without a current in-core channel assignment elect a channel from those available after round one. In round three, expected in January 2006, station licensees not yet assigned a channel, or assigned channel 2 through 6, may elect a channel from those available after round two. Between each round, the Commission will announce which channels are protected, which are in conflict, and which are available. Station licensees with conflicts will decide whether to accept interference and remain on

⁴¹⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴¹⁹ *Second DTV Periodic NPRM*, 18 FCC Rcd 1279 (2003).

⁴²⁰ See 5 U.S.C. § 604.

⁴²¹ See *Fifth Report and Order*, 12 FCC Rcd at 12856 ¶ 116 (1997), on recon., *Service Reconsideration Order*, 13 FCC Rcd 6860, on further recon., *Second MO&O on Recon. of the Fifth and Sixth R&Os*, 14 FCC Rcd 1348 (1998), recon. dismissed, *Order*, 14 FCC Rcd 11572 (1999), recon. dismissed, *Order*, 15 FCC Rcd 4760 (2000).

elected channels or move to the next election round. After round three, the Commission will resolve remaining conflicts based on relevant factors. Finally, the Commission will issue a Notice of Proposed Rulemaking, expected by August 2006, proposing and seeking comment on new DTV Table of Allotments.

4. To facilitate the election process, the Media Bureau has implemented a freeze on certain requests for allotment and service area changes by TV and DTV stations. Notwithstanding the freeze, stations with international coordination issues or other problems beyond their control may amend applications as necessary.

5. In addition, the Order finds that firm but fair replication and maximization dates are necessary to increase DTV service to the public and also to advance the clearing of spectrum in the Lower and Upper 700 MHz bands (comprising television channels 52-69). The Order establishes two replication and maximization deadlines. The first deadline is July 1, 2005 and it applies to the top four affiliates in the top 100 markets. If they will remain on their digital channel assignments after the transition, they must fully replicate and maximize by this date. If they will move to another channel post-transition, they must be serving by July 1, 2005 100% of the number of viewers served by the 1997 facility on which their replication was based. The second deadline, July 1, 2006, applies to all other stations. If they will remain on their current digital channel after the transition, they must fully replicate and maximize by this date. If they will move to another channel post-transition, they must be serving by July 2006 at least 80% of the number of viewers served by the 1997 facility on which their replication was based. Failure to replicate or maximize by these deadlines will result in loss of interference protection to the unserved areas. If they have met these deadlines, the item would allow stations that are going to move to a different channel after the transition to carry-over their authorized maximized area to their new channels.

6. The Order does not adopt an intermediate signal requirement, but retains the 7 dB increase required by December 31, 2004, for commercial stations and December 31, 2005, for noncommercial stations.

7. To provide additional flexibility and fairness for many of the stations that are currently out-of-core, the Order allows such stations to return out-of-core digital channels before the transition and "flash cut" to digital on their in-core channels without losing replication or maximization protection on their eventual in-core channel assignments.

8. In addition to resolving the channel election, replication and maximization issues, the item encourages creative and value-added programming on digital channels by removing the requirement that licensees simulcast their analog video programming on their digital channel, while retaining the requirements for minimum hours of operation. This "simulcast requirement" could be reinstituted near the end of the transition if warranted.

9. In addition, the Report and Order permits satellite stations to "flash-cut" from analog to digital at the end of the transition; clarifies the interference protection parameters of broadcast stations on channels 51-69; and requires stations to use Program and System Information Protocol ("PSIP"),⁴²² which will

⁴²² See "Program and System Information Protocol for Broadcast and Cable," Advanced Television Systems Committee, Doc. A/65B, Rev. B to PSIP for Terrestrial Broadcast and Cable ("ATSC A/65B" or "PSIP") (Mar. 18, 2003).

facilitate digital operations and features, including channel numbering, v-chip, and closed captioning, and will establish technical requirements that will permit the TV ratings system to be modified in the future.

10. Finally, the Report and Order approves in principle the use of distributed transmission technologies for digital television service. Digital Transmission Systems ("DTS") would employ multiple synchronized transmitters spread around a station's service area, enabling broadcasters to fill gaps in service coverage. The item states the Commission will open a separate "fast track" proceeding to propose rules for DTS operation and to address related technical and policy issues. In the interim, the Order allows stations to request authorization for DTS operation on a case-by-case basis based on conservative parameters.

11. The Report and Order defers action on whether to require point-of-sale labels describing TV equipment capabilities (such as, high definition, digital monitor only, or analog) and on the issue of how the Commission should interpret the Section of the Communications Act that sets December 31, 2006, as the deadline for return of analog spectrum and establishes criteria for extensions of that deadline. The Order states that the Commission plans to address these issues in the near future.

12. **Summary of Significant Issues Raised by Public Comments in Response to the IRFA.** The American Cable Association ("ACA") filed a comment in response to the IRFA in this proceeding. ACA states that the Commission's DTV transition regulations must accommodate the unique circumstances and higher cost structures of smaller cable systems. In particular, ACA asks that the Commission address the following issues: 1) the disproportionate cost of the DTV transition for smaller cable systems due to headend and set-top box costs; 2) the disproportionate burden of dual must-carry for smaller cable systems due to more limited channel capacity; 3) the unwillingness of some broadcasters to deliver an adequate quality DTV signal to outlying areas of their markets; and 4) the "continuing abuse" of retransmission consent of a handful of media conglomerates, which is constraining channel capacity, raising costs, and hampering small systems' ability to develop solutions to DTV carriage. ACA urges the Commission to consider alternatives to its rules that would minimize any significant economic impact on small entities, including exemption from coverage of the rule or parts thereof for small entities.⁴²³

13. The issues raised by ACA regarding the impact of the transition on smaller cable systems are more pertinent to the Commission's pending must-carry proceeding than to this DTV periodic review. The rules and policies addressed herein apply primarily to broadcasters and equipment manufacturers, and relate only indirectly to cable operators. A copy of ACA's comments have been associated with the file in the must-carry proceeding.

14. Although we decline to address the issues raised by ACA in this proceeding, we do adopt herein a number of policies that take into consideration the legitimate needs and interests of small businesses. For example, the item provides for a later replication and maximization interference protection deadline of July 1, 2006 for smaller stations (not affiliated with a top-four network) and those in smaller markets. Affiliates of the top-four networks (i.e., ABC, CBS, Fox, and NBC) in markets 1-100 are given an earlier replication and maximization interference protection deadline of July 1, 2005. In addition, smaller stations and those in smaller markets that will move to another channel post-transition are permitted to serve only 80% (rather than 100%) of the number of viewers served by the 1997 replication coverage area by the July 2006 deadline to carry-over their authorized maximized service area to their new channel. To assist stations facing severe financial constraints or obstacles beyond a station's control that are specific to the DTV transition process, the item permits these stations to apply for a six-

⁴²³ ACA IRFA Comments at 1-3.

month waiver of the interference protection deadline.

15. The Report and Order also permits certain stations with an in-core NTSC channel paired with an out-of-core DTV channel, as well as stations with two out-of-core channels, to surrender their out-of-core DTV channel before the end of the transition and operate in analog on their in-core channel. The item also permits single-channel DTV stations out of the core, upon Commission approval, to elect not to construct DTV facilities and instead give up their out-of-core DTV channel in return for a DTV channel inside the core. Upon approval from the Commission, these stations will "flash-cut" to digital operations on their in-core channel no later than the end of the transition in the station's market. This "flash-cut" policy will assist stations with an out-of-core DTV channel that are concerned about the cost of constructing DTV facilities outside the core that cannot be operated after the transition. In addition, the Report and Order permits satellite stations to surrender one of their paired channels and flash cut from analog to digital transmissions by the end of the transition period. This flash-cut option should provide significant financial relief for satellite stations, many of which are small and all of which serve communities unable to support a full-service station.

16. **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.⁴²⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government entity."⁴²⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴²⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").⁴²⁷

17. **Television Broadcasting.** The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.⁴²⁸ Business concerns included in this industry are those "primarily engaged in broadcasting images together with

⁴²⁴ 5 U.S.C. § 603(b)(3).

⁴²⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies, "unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

⁴²⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁴²⁷ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation, and independence are sometime difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

⁴²⁸ See 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

sound.”⁴²⁹ According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations⁴³⁰ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).⁴³¹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

^{18.} In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

^{19.} **Cable and Other Program Distribution.** The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.⁴³² This category includes, among others, cable operators, direct broadcast satellite (“DBS”) services, home satellite dish (“HSD”) services, multipoint distribution services (“MDS”), multichannel multipoint distribution service (“MMDS”), Instructional Television Fixed Service (“ITFS”), local multipoint distribution service (“LMDS”), satellite master antenna television (“SMATV”) systems, and open video systems (“OVS”). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue.⁴³³ We address below each service individually to

⁴²⁹ NAICS Code 515120. This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

⁴³⁰ “Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

⁴³¹ FCC News Release, “Broadcast Station Totals as of September 30, 2002.”

⁴³² 13 C.F.R. § 121.201, NAICS code 517510. This NAICS code applies to all services listed in this paragraph.

⁴³³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

provide a more precise estimate of small entities.

20. Cable Operators. The Commission has developed our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴³⁴ We last estimated that there were 1,439 cable operators that qualified as small cable companies.⁴³⁵ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules in this Report and Order.

21. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴³⁶ The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴³⁷ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.⁴³⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. Direct Broadcast Satellite ("DBS") Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services.⁴³⁹ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.⁴⁴⁰ There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.⁴⁴¹ The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could

⁴³⁴ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

⁴³⁵ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴³⁶ 47 U.S.C. § 543(m)(2).

⁴³⁷ 47 C.F.R. § 76.1403(b).

⁴³⁸ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴³⁹ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

23. Home Satellite Dish ("HSD") Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services.⁴⁴² This definition provides that a small entity is one with \$12.5 million or less in annual receipts.⁴⁴³ The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 150 channels are scrambled and approximately 350 are unscrambled.⁴⁴⁴ HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.⁴⁴⁵

24. Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS.⁴⁴⁶ LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁴⁴⁷

25. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁴⁴⁸ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁴⁹ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493

⁴⁴² 13 C.F.F. § 121.201, NAICS code 517510.

⁴⁴³ *Id.*

⁴⁴⁴ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 19 FCC Rcd 1606, 1655 (2004) ("Tenth Annual Report").

⁴⁴⁵ *Id.* at 4385.

⁴⁴⁶ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 10 FCC Rcd at 9589, 9593 (1995) ("ITFS Order").

⁴⁴⁷ See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997) ("LMDS Order").

⁴⁴⁸ 47 C.F.R. § 21.961(b)(1).

⁴⁴⁹ See *ITFS Order*, 10 FCC Rcd at 9589.

Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts.⁴⁵⁰ This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, for purposes of the FRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

26. The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS.⁴⁵¹ There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.⁴⁵² However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

27. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁴⁵³ An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years.⁴⁵⁴ These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.⁴⁵⁵ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

28. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

⁴⁵⁰ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁵¹ *Id.*

⁴⁵² SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

⁴⁵³ See *LMDS Order*, 12 FCC Rcd at 12545.

⁴⁵⁴ *Id.*

⁴⁵⁵ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

29. **Satellite Master Antenna Television ("SMATV") Systems.** The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts.⁴⁵⁶ Currently, there are approximately 250 SMATV operators providing service to approximately 1.2 million residential subscribers.⁴⁵⁷ The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000-4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

30. **Open Video Systems ("OVS").** Because OVS operators provide subscription services,⁴⁵⁸ OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services.⁴⁵⁹ This definition provides that a small entity is one with \$ 12.5 million or less in annual receipts.⁴⁶⁰ The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

31. **Electronics Equipment Manufacturers.** Rules adopted in this proceeding could affect manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment⁴⁶¹ as well as radio and television broadcasting and wireless communications equipment.⁴⁶² These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments

⁴⁵⁶ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁵⁷ See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 19 FCC Rcd 1606, 1666 (2004) ("Tenth Annual Report").

⁴⁵⁸ See 47 U.S.C. § 573.

⁴⁵⁹ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁶⁰ *Id.*

⁴⁶¹ 13 CFR § 121.201, NAICS code 334310.

⁴⁶² 13 CFR § 121.201, NAICS code 334220.

manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.⁴⁶³ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁶⁴ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.⁴⁶⁵ Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁶⁶ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

32. Electronic Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.⁴⁶⁷ Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.⁴⁶⁸ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

33. Description of Projected Reporting, Recordkeeping and other Compliance

⁴⁶³ 13 CFR § 121.201, NAICS code 334310.

⁴⁶⁴ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁴⁶⁵ 13 C.F.R. § 121.201, NAICS code 334220.

⁴⁶⁶ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁴⁶⁷ 13 C.F.R. § 121.201, NAICS code 334111.

⁴⁶⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

Requirements. The Report and Order requires all full power commercial and noncommercial television broadcast licensees and permittees to file a pre-election certification form by November 2004. In addition, full power licensees and permittees choosing to participate in the channel election process will file channel election forms in one or more of the three election rounds, and may file conflict decision forms based on the outcome of their election. The purpose of these filings is to permit stations to inform the Commission of their preference for a final DTV channel. Without these election forms, stations could not inform the Commission of their preferred channel for post-transition DTV operation. The decision as to which channel to elect for post-transition operation may be a difficult and time-consuming one for some broadcasters. However, channel election and the development of a new DTV Table of Allotments are steps integral to the digital transition. Factors that could make the channel election decision time consuming are not likely to be related to whether the entity is small or large. Licensees may elect not to participate in the channel election process and not file these forms and instead have the FCC assign them a post-transition channel at the end of the election process.

34. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴⁶⁹

35. In a number of instances, while adopting a given rule for larger entities, the Report and Order considers and adopts alternative requirements for small or smaller market entities to assist these entities in completing the digital conversion. For example, the Report and Order adopts the following interference protection deadlines for DTV channels within the core spectrum: July 1, 2005, for affiliates of the top-four networks (*i.e.*, ABC, CBS, Fox, and NBC) in markets 1-100; and July 1, 2006, for all other commercial DTV licensees as well as noncommercial DTV licensees. Thus, smaller stations and stations in smaller markets are given more time to meet the interference protection deadline. In addition, smaller stations planning to move to another channel post-transition are given lesser requirements than larger stations. For top four affiliates in the top 100 markets, if they will remain on their digital channel assignments after the transition, they must fully replicate and maximize by July 1, 2005. If they will move to another channel post-transition, they must be serving by July 1, 2005 100% of the number of viewers served by the 1997 facility on which their replication was based. The second deadline, July 1, 2006, applies to all other stations. If they will remain on their current digital channel after the transition, they must fully replicate and maximize by this date. If they will move to another channel post-transition, they must be serving by July 2006 at least 80% of the number of viewers served by the 1997 facility on which their replication was based. Failure to replicate or maximize by these deadlines will result in loss of interference protection to the unserved areas. If they have met these deadlines, the item would allow stations that are going to move to a different channel after the transition to carry-over their authorized maximized area to their new channels.

36. While the Commission considered applying the same deadline and replication and maximization requirements to all stations, it concluded that a later deadline and reduced requirement for

⁴⁶⁹ 5 U.S.C. § 603(c)(1) – (c)(4).

smaller and smaller market stations is warranted. In addition, to assist stations facing severe financial constraints or obstacles beyond a station's control that are specific to the DTV transition process, the item permits these stations to apply for a six-month waiver of the interference protection deadline.

37. In some instances, a rule was adopted applicable to large and small entities in the same way conferring the same benefits upon both. In furtherance of the significant public interest in rapid band-clearing and to address the potential for stranded investment in facilities outside of core channels, the Report and Order permits certain stations with an in-core NTSC channel paired with an out-of-core DTV channel, stations with two out-of-core channels, and single-channel DTV stations out-of-the-core, to surrender their out-of-core DTV channel before the end of the transition and operate in analog on their in-core channel. Upon approval from the Commission, these stations will "flash-cut" to digital operations on their in-core channel no later than the end of the transition in the station's market. This "flash-cut" policy will assist both smaller and larger stations with an out-of-core DTV channel that are concerned about the cost of constructing DTV facilities outside the core that cannot be operated after the transition. These entities will be permitted to surrender early their out-of-core channel and operate only in analog on their in-core channel until they flash-cut to digital-only operation on that channel no later than the end of the transition. The Commission considered not permitting these stations to flash-cut, but finally concluded that permitting this flash-cut option would best advance the transition and the clearing of the out-of-core spectrum.

38. In addition, the Report and Order permits satellite stations to surrender one of their paired channels and flash cut from analog to digital transmissions by the end of the transition period. This flash-cut option should provide significant financial relief for satellite stations, many of which are small and all of which serve communities unable to support a full-service station.

39. The Report and Order also adopts another waiver that will most likely benefit smaller stations as opposed to larger stations. The Report and Order requires television licensees that have not yet been granted an initial DTV CP to construct, within a year from the adoption date of this Report and Order, a "checklist" facility that conforms with the parameters of the DTV Table of Allotments and other key processing requirements. The Commission will consider requests for waiver of the one year construction deadline, on a case-by-case basis, using the criteria for extension of DTV construction deadlines. Grounds for an extension must relate to the checklist facility, not the pending non-checklist application. This waiver procedure permits stations facing financial hardship as well as other obstacles to construction of digital facilities to make a showing why waiver of the construction deadline would serve the public interest. The waiver is available to all stations regardless of size or income, but it likely to benefit smaller stations more as these stations are more likely to encounter financial hardships in constructing DTV checklist facilities.

40. The Report and Order declines to postpone the existing phased-in minimum operating hours for smaller and smaller-market digital television stations. However, these phased-in dates permit these stations to step up gradually the number of hours of digital programming they offer. In contrast, top-four network affiliates in the top 30 television markets are required to operate their DTV station at any time that the analog station is operating.

41. **Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.**
None.

42. **Report to Congress.** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁷⁰ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁴⁷¹

⁴⁷⁰ See 5 U.S.C. § 801(a)(1)(A).

⁴⁷¹ See 5 U.S.C. § 604(b).

APPENDIX D
DTV STATIONS AUTHORIZED TO BE ON THE AIR
As of July 28, 2004

Category	# DTV Paired Licenses	# DTV Stations on Air	% On the Air	With Licensed Facility or Program Tests	With STAs
Top 30 Market Network Affiliates	119	119	100 percent	110	9
Other Commercial*	1230	1018	82.8 percent	342	676
Non-Commercial Educational**	373	286	76.7 percent	182	104
Total	1722	1423	82.6 percent	634	789

* May 1, 2002 Build Out Deadline

** May 1, 2003 Build Out Deadline

A total of 843 commercial television stations subject to the May 1, 2002, deadline requested an initial extension of time to complete construction. The Media Bureau granted 772 of these initial extension requests upon showings that the delay in completing construction was due to financial hardship or to circumstances that were either unforeseeable or beyond the permittee's control. In October 2003, the Commission ruled on 141 applications submitted by commercial television stations seeking additional extensions of the May 1, 2002, deadline for construction of their digital television facilities pursuant to Section 73.624(d)(3)(iii) of the Rules.⁴⁷² The Commission granted the applications and extended the DTV construction deadline for 104 stations to six months from the release date of the *Order*. The Commission admonished 7 stations for their continuing failure to timely construct, denied their applications, and afforded them six months from the release date of the *Order* to comply with the DTV construction rule.⁴⁷³ The DTV construction deadline for the remaining 30 satellite stations was deferred pending the outcome of this DTV periodic review proceeding.⁴⁷⁴ In May 2004, the Commission granted a third extension of time to complete construction to five "network-affiliated" television stations located in the top thirty television markets.⁴⁷⁵ In addition, in June 2004, the Commission granted 29 applications submitted by commercial television stations seeking a third extension of the May 1, 2002, DTV construction deadline.⁴⁷⁶ In these cases, the Commission found that the television licensees had made reasonable and diligent efforts to construct their authorized facilities and that the failure to construct was

⁴⁷² 47 C.F.R. § 73.624(d)(iii).

⁴⁷³ Requests for Extension of the Digital Television Construction Deadline, 18 FCC Rcd 22705 (2003).

⁴⁷⁴ Because the *Second DTV Periodic NPRM* requested comment on whether the public interest would be served by allowing satellite stations to turn in their digital authorization and "flash cut" to DTV transmission at the end of the transition period, the Commission deferred the construction deadlines of the 30 satellites stations requesting construction extensions pending the outcome of the DTV periodic review proceeding.

⁴⁷⁵ Requests for Extension of the Digital Television Construction Deadline, FCC 04-117 (rel. May 26, 2004).

⁴⁷⁶ Requests for Extension of the Digital Television Construction Deadline, FCC 04-124 (rel. June 10, 2004).

due to causes that were either unforeseeable or beyond the licensee's control. These stations were given an additional six months from the release date of the applicable *Order* to complete construction. In the June 2004 *Order*, the Commission admonished two stations for their continuing failure to timely construct DTV facilities, denied their extension applications, and afforded them six months from the release date of the *Order* to comply with the DTV construction rule. In addition, in the June 2004 *Order* the Commission deferred the DTV construction date for four satellite stations pending the outcome of this DTV periodic review proceeding.

Two-hundred fourteen non-commercial television stations subject to the May 1, 2003, deadline requested an initial extension of time to complete construction. All of these stations were granted six-month extensions, mainly because of difficulties encountered by the stations in implementing award grants from the Corporation for Public Broadcasting and the U.S. Department of Commerce. One hundred thirty-two NCE stations filed requests for second extensions. One hundred and twenty-nine of these requests were granted and these stations awarded an additional six-month extension of time to construct, largely due to technical difficulties that were either unforeseeable or beyond the permittees' control. Five of the second extension requests were dismissed since the stations subsequently commenced DTV operations.

APPENDIX E

**PRE-ELECTION CERTIFICATION
FORM**

[See separate pdf file]

INSTRUCTIONS FOR FCC 381

DIGITAL CHANNEL ELECTION
FOR TELEVISION BROADCAST STATION:
PRE-ELECTION CERTIFICATION FORM

GENERAL INSTRUCTIONS

- A. This FCC Form 381 is to be used by full power TV broadcast licensees and permittees (hereinafter referred to collectively as "licensees") participating in the DTV channel election process in order to provide and certify the technical information that will be used to evaluate elections made during the channel election process. A separate form should be filed for every full power TV broadcast station either licensed or with a construction permit. Licensees make these certifications regarding database accuracy and intent to replicate/maximize to provide certainty with respect to their technical data for consideration by others participating in the channel election process. No fee is required for submission of this form.
- B. This FCC Form must be filed by [REDACTED] – 30 days from publication of Second DTV Periodic Report and Order in Federal Register.] All TV broadcast licensees participating in the digital channel election process may make the following certifications. Licensees that do not submit this FCC Form by the deadline will be presumed (1) to agree that their database technical information on file with the Commission is accurate and complete, and (2) not to intend to replicate or maximize, and such decision will be taken into account in the Commission's determination of final channel assignments.
- C. This form makes references to FCC rules. Licensees should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.) Part 73 "Television Broadcast Services".
- FCC Rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t.; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.
- D. The licensee must ensure that the Facility ID Number, Call Sign, and the Channel information are accurate.
- E. This form must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online

electronic forms system. Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at: <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Video Services Division Help Desk at 418-2662.

- F. The licensee must sign the form. Depending on the nature of the licensee, the form should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the form for his or her client, but only in cases of the licensee's disability or absence from the United States. See 47 C.F.R. § 73.3513. Because the form is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43, 13 FCC Rcd 23056, 23064 (1998).
- G. The licensee should provide all information requested by this form. Defective or incomplete forms will not be accepted. Inadvertently accepted forms are also subject to dismissal. See 47 C.F.R. § 73.3564(b).

INSTRUCTIONS FOR SECTION I:
GENERAL INFORMATION

Licensee/Permittee Information.

- Item 1: Licensee or Permittee Name.** The name of the licensee or permittee must be stated exactly in Item 1. If the licensee is a corporation, the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Licensees should use only those state abbreviations approved by the U.S. Postal Service.

Station/Facility Information.

- Item 2: FCC Registration Number (FRN).** To comply with the Debt Collection Improvement Act of 1996, the licensee must enter its FRN number, a ten-digit unique

entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC webpage at <http://www.fcc.gov> or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from <http://www.fcc.gov/formpage.html> or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at <http://www.CORES@fcc.gov> or by calling 1-877-480-3201.

Call Sign. Licensee must enter the current call sign for its NTSC (analog) station or, if the licensee does not have an NTSC station, for its DTV (digital) station.

Facility ID Number. TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mb. Once at this website, scroll down and select CDBS Public Access. You can obtain your TV Facility ID Number by calling: (202) 418-1600. Further, the Facility ID Number is now included on all TV authorizations and postcards. In addition, provide the name of the community of license and the state where the station is providing service.

Community of License. Licensee must provide the City and State for its station's community of license.

3. **Item 3: Currently Assigned Channels (Digital and Analog).** For "3.a," stations must indicate the number of their currently assigned DTV channel. For "3.b," stations must indicate the number of their currently assigned NTSC (analog) channel. Single channel broadcasters should indicate "Not Applicable," where appropriate.

Contact Information.

4. **Item 4: Contact Representative.** If the licensee is represented by a third party (for example, legal counsel), that person's name, firm or company, mailing address and telephone/electronic mail address may be specified here.

Purpose of Form.

5. **Item 5: Purpose of filing.** Licensees filing their pre-election certification form must select "5.a." Licensees filing an amendment to their existing pre-election certification form must select "5.b." This FCC Form, whether as a certification or amendment, will not be accepted after the filing deadline.

INSTRUCTIONS FOR SECTION II: CERTIFICATIONS

Replication/Maximization Deadlines.

Licensees should be aware of the replication/maximization deadlines that pertain to current DTV facilities and which

affect the right to "carry over" interference protection to their post-transition channel for DTV operation.

Replication/Maximization Certification.

By completing the appropriate certification in this section, the licensee may certify its intent to construct and operate its allotted "replication" facilities or already-authorized "maximization" facilities on its post-transition channel.

Licensees are reminded that false certifications may result in fines and loss of license. Additionally, a licensee's failure to replicate or maximize to the extent it certifies will result in the loss of interference protection to those service areas not replicated or maximized.

1. **Item 1: Replication/Maximization Certification.** Licensees must select one of five options to indicate how their channel elections should be evaluated for purposes of interference protection analysis.
 - a. *Use of maximized facilities as authorized.* A licensee certifying to operate its post-transition DTV station at maximized facilities as authorized by license or construction permit must select "a," and provide the relevant FCC File No. where indicated. Stations with more than one maximized facility authorization must identify the authorization FCC File No. to be used. (Stations must refer to their DTV facility and not their NTSC facility.)
 - b. *Use of pending DTV application for maximized facilities.* A licensee certifying to operate its post-transition DTV station pursuant to a pending DTV application for maximized facilities that has not been authorized because of a pending international coordination issue must select "b," and provide the relevant FCC File No. where indicated. Licensee's certification is subject to the outcome of the international coordination.
 - c. *Use of allotted replication facilities.* A licensee certifying to operate its post-transition DTV station based on its allotted replication facilities must select "c." Stations that have not changed their DTV channel since the *DTV Second MO&O*, 14 FCC Rcd 1348 (1998), will have their replication facilities based on the facilities established in Appendix B of the *DTV Second MO&O*. Stations that have changed their DTV channel since the *DTV Second MO&O* will have their replication facilities based on the facilities established by the relevant Report and Order for that station.
 - d. *NTSC single channel stations.* A licensee certifying that it does not have a DTV channel allotment and that it will operate its post-transition DTV station based on authorized NTSC license or construction permit must select "d," and provide the relevant FCC File No. where indicated. (This certification is only appropriate for NTSC single station

licensees, and is not appropriate for any station with a DTV channel allotment.)

- e. *No replication or maximization.* A licensee certifying that it will neither replicate nor maximize must select "e." (This certification is appropriate for licensees not certifying to a.-d., above.) The licensee must indicate its authorized DTV facilities for which it will operate its post-transition DTV station, and provide the relevant FCC File No. where indicated. Stations must identify the authorization FCC File No. to be used. (Stations must refer to their DTV facility and not their NTSC facility.)

Database Certification.

2. **Item 2: Database Certification.** The licensee must certify that it has reviewed its database information on file with the Commission and that its technical information is accurate and complete, to the best of its knowledge. If the licensee answers "no," it must submit an explanation, including appropriate engineering data, as an Exhibit to this form.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the form to determine the ultimate channel to be awarded for post-transition DTV operation. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your form may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your form may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you file an incomplete form, the form may be returned without action having been taken upon it. Your response is required to make the pre-election process certifications.

We have estimated that it will take respondents on average 2 hours to complete this collection of information. Our estimate

includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project ([REDACTED]), Washington, DC 20554. We will also accept your comments via the Internet if you send them to Leslie.Smith@fcc.gov. Please **DO NOT SEND COMPLETED FORMS TO THIS ADDRESS**. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of [REDACTED].

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

FCC 381

PRE-ELECTION CERTIFICATION FORM

Must Be Filed by [DATE]

**PLEASE READ INSTRUCTIONS BEFORE
COMPLETING THIS FORM**

FOR
FCC
USE
ONLY

FOR COMMISSION USE ONLY

FILE NO.

SECTION I - GENERAL INFORMATION

Licensee/Permittee Information

1. Legal Name of the Licensee/Permittee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

Station/Facility Information

2. FCC Registration Number		
Call Sign	Facility ID Number	
Community of License: City	State	

3. Currently Assigned Channels:

a. DTV Channel ☐ ☐ Not Applicable

b. NTSC Channel ☐ ☐ Not Applicable

Contact Information (if different from licensee/permittee)

4. Contact Representative		Firm or Company Name	
Mailing Address			
City	State or Country (if foreign address)	ZIP Code	
Telephone Number (include area code)	E-Mail Address (if available)		

Purpose of Form:

5. The purpose of this Pre-Election Certification Form is for licensees/permittees to provide and certify the technical information that will be used to evaluate elections made during the channel election process. Licensees/permittees make these certifications regarding database accuracy and intent to replicate/maximize to provide certainty with respect to their technical data for consideration by others participating in the channel election process. **(SELECT ONE)**

a. ☐ Certification b. ☐ Amendment

SECTION II - CERTIFICATIONS

All broadcast licensees and permittees participating in the digital channel election process may make the following certifications. Licensees/permittees that do not submit this form by the deadline on page one will be presumed (1) to agree that their database technical information on file with the Commission is accurate and complete; and (2) not to intend to replicate or maximize, and such decision will be taken into account in the Commission's determination of final channel assignments.

Replication/Maximization Deadlines

By completing the appropriate certification below, licensee/permittee may certify its intent to construct and operate its allotted "replication" facilities or already-authorized "maximization" facilities on its post-transition channel.

Licensees/permittees are reminded that false certifications may result in fines and loss of license. Additionally, licensee's/permittee's failure to replicate or maximize to the extent it certifies will result in the loss of interference protection to those service areas not replicated or maximized.

Licensee/permittee should also be aware of the following replication and maximization deadlines that pertain to current DTV facilities and that affect the right to "carry over" interference protection to its post-transition channel. (Failure to meet the replication/maximization requirements will cause the licensee/permittee to lose interference protection to the unused portion of the associated area as of the applicable interference protection deadline. Furthermore, a licensee/permittee failing to meet these deadlines will lose the ability to "carry over" its interference protection to its unserved DTV service area on its post-transition channel.):

- o **July 1, 2005 --** Deadline for DTV licensees affiliated with the top-four networks (*i.e.*, ABC, CBS, Fox, and NBC) in markets 1-100. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based. The number of viewers served by a station's 1997 facility on which its replication is based will be determined using population data from the year 2000 census.
- o **July 1, 2006 --** Deadline for all other commercial DTV licensees as well as noncommercial DTV licensees. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized DTV facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication coverage was based. The number of viewers served by a station's 1997 facility on which its replication is based will be determined using population data from the year 2000 census.

1. Replication/Maximization Certifications

Licensees/permittees must indicate how their channel elections should be evaluated for purposes of interference protection analysis. **(SELECT ONE)**:

- a. ☐ Licensee/permittee hereby certifies that it will operate its post-transition DTV station at **maximized facilities**, as authorized by license or construction permit, FCC File No.

(Licensee/permittee must provide FCC File No. here.)

- b. ☐ Licensee/permittee hereby certifies that it will operate its post-transition DTV station pursuant to a pending DTV application for **maximization facilities that has not been authorized** because of a pending international coordination issue.

(Licensee/permittee must provide FCC File No. here.)

- c. ☐ Licensee/permittee hereby certifies that it will operate its post-transition DTV station based on its allotted **replication facilities**.

- d. ☐ Licensee/permittee hereby certifies that it **does not have a DTV channel allotment**, and will operate its post-transition DTV station based on its currently authorized NTSC license or construction permit, FCC File No.

(License/permittee must provide FCC File No. here.)

- e. ☐ Licensee/permittee hereby certifies that it will **neither replicate nor maximize**, and will operate its post-transition DTV station pursuant to the following authorized DTV facilities: **(SELECT ONE)**

- i. ☐ License, FCC File No.

(Licensee must provide FCC File No. here.)

- ii. ☐ Construction Permit, FCC File No.

(Licensee/permittee must provide FCC File No. here.)

- iii. ☐ STA, FCC File No.

2. Database Certification

Licensee/permittee hereby certifies that it has reviewed its database information on file with the Commission and that its technical information is accurate and complete, to the best of its knowledge.

☐ YES ☐ NO

If no, licensee/permittee must attach an explanation, including appropriate engineering data, as an Exhibit to this form.

Exhibit No.

I certify that the statements and certifications in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

APPENDIX F

DIGITAL CHANNEL ELECTION FORMS

[See separate pdf file]

INSTRUCTIONS FOR FCC 382

DIGITAL CHANNEL ELECTION FOR TELEVISION BROADCAST STATION: FIRST ROUND ELECTION

GENERAL INSTRUCTIONS

- A. This FCC Form is to be used by full power TV broadcast licensees and permittees (hereinafter referred to collectively as "licensees") participating in the channel election process in order to identify an in-core Digital Television (DTV) Channel for post-transition DTV operation. Specifically, the purpose of this FCC Form 382, First Round Election Form, is for all licensees currently assigned at least one in-core channel (i.e., channels 2-51) to make a channel election for their final DTV operation. A separate form should be filed for every full power TV broadcast station either licensed or with a construction permit. No fee is required for submission of this form.
- B. This FCC Form must be filed by [60 days from publication of the 2nd DTV Periodic Review R&O in the FR [REDACTED] [REDACTED].] All TV broadcast licensees required to participate in the first round of elections of the digital channel election process must file this FCC Form. Licensees that do not submit this FCC Form by the deadline will be assigned a channel by the Commission for post-transition DTV operation. (Such assignment may be made at the end of the channel election process.)
- C. This form makes references to FCC rules. Licensees should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.) Part 73 "Television Broadcast Services".

FCC Rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.
- D. The licensee must ensure that the Facility ID Number, Call Sign, and the Channel information are accurate.
- E. This form must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing

web site at: <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Video Services Division Help Desk at 418-2662.

- F. The licensee must sign the form. Depending on the nature of the licensee, the form should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the form for his or her client, but only in cases of the licensee's disability or absence from the United States. See 47 C.F.R. § 73.3513. Because the form is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43, 13 FCC Rcd 23056, 23064 (1998).
- G. The licensee should provide all information requested by this form. Defective or incomplete forms will not be accepted. Inadvertently accepted forms are also subject to dismissal. See 47 C.F.R. § 73.3564(b).

INSTRUCTIONS FOR SECTION I: GENERAL INFORMATION

Licensee/Permittee Information.

1. Item 1: Licensee or Permittee Name. The name of the licensee or permittee must be stated exactly in Item 1. If the licensee is a corporation, the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Licensees should use only those state abbreviations approved by the U.S. Postal Service.

Station/Facility Information.

2. Item 2: FCC Registration Number (FRN). To comply with the Debt Collection Improvement Act of 1996, the licensee must enter its FRN number, a ten-digit unique entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC

webpage at <http://www.fcc.gov> or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from <http://www.fcc.gov/formpage.html> or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at <http://www.CORES@fcc.gov> or by calling 1-877-480-3201.

Call Sign. Licensee must enter the current call sign for its NTSC (analog) station or, if the licensee does not have an NTSC station, for its DTV (digital) station.

Facility ID Number. TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mb. Once at this website, scroll down and select CDBS Public Access. You can obtain your TV Facility ID Number by calling: (202) 418-1600. Further, the Facility ID Number is now included on all TV authorizations and postcards. In addition, provide the name of the community of license and the state where the station is providing service.

Community of License. Licensee must provide the City and State for its station's community of license.

3. **Item 3: Currently Assigned Channels (Digital and Analog).** For "3.a.," stations must indicate the number of their currently assigned DTV channel. For "3.b.," stations must indicate the number of their currently assigned NTSC (analog) channel. Single channel broadcasters should indicate "Not Applicable," where appropriate.

Contact Information.

4. **Item 4: Contact Representative.** If the licensee is represented by a third party (for example, legal counsel), that person's name, firm or company, mailing address and telephone/electronic mail address may be specified here.

Purpose of Form.

5. **Item 5: Purpose of filing.** Licensees making a channel election must select "5.a." Licensees filing an amendment to their channel election must select "5.b." This FCC Form, whether as a channel election or amendment, will not be accepted after the filing deadline.

INSTRUCTIONS FOR SECTION II: CHANNEL ELECTION

First Round Channel Election.

1. **Item 1: Channel Election.** Licensees currently assigned an in-core channel (i.e., licensees now assigned at least one channel between 2-51) have up to three choices. The licensee may (a) elect a channel from its currently assigned (DTV or NTSC) in-core channels; (b) elect a negotiated

channel pursuant to an agreement with another licensee(s); or (c) (for certain licensees only) make no election at this time and instead elect to participate in the second round of elections. If making an election, licensee must input its desired channel number, where indicated.

Two-in-core licensees. All licensees currently assigned two in-core channels (i.e., licensees now assigned a DTV and NTSC channel in 2 through 51) must make a channel election in this round to indicate which of their currently assigned in-core channels (DTV or NTSC) they elect to use for post-transition DTV operations. Two-in-core licensees electing one of their assigned channels must select "1.a." Two-in-core licensees may also make a channel election through a proposed negotiated channel election arrangement. These licensees must select "1.b." Post-transition rights to in-core channel(s) assigned to the licensee for this station but not elected will be released if the Commission tentatively designates the channel elected.

Two-in-core licensees with two currently assigned low VHF channels (i.e., licensees now assigned a DTV and NTSC channel in 2 through 6) may decline to elect either of their assigned in-core channels and choose to make no election at this time. Such low VHF licensees must indicate that they make no channel election in the first round by selecting "1.c." By doing so, low VHF licensees immediately release post-transition rights to both of their low VHF channels for this station in order to participate in the second round of elections.

One-in-core licensees. Licensees currently assigned one in-core channel (i.e., licensees now assigned either a DTV or NTSC channel in 2 through 51) must elect in this round whether to use their in-core channel for their final DTV operation. One-in-core licensees electing their assigned in-core channel must select "1.a." One-in-core licensees may also make a channel election through a proposed negotiated channel election arrangement. These licensees must select "1.b." Post-transition rights to the licensee's currently assigned in-core channel for this station will be released if the Commission tentatively designates the channel elected. One-in-core licensees may decline to elect their assigned in-core channel and choose to make no election at this time. Such licensees must indicate that they make no channel election by selecting "1.c." By doing so, these licensees immediately release post-transition rights to their assigned in-core channel for this station in order to participate in the second round of elections.

Negotiated Channel Election Arrangements. Licensees making a channel election pursuant to a Negotiated Channel Election Arrangement must choose "1.b." on the form. Licensees must accordingly indicate the negotiated channel number on the form. Note that the negotiated channel election is valid only upon Commission approval.

Licenses must also complete Schedule A for negotiated channel election arrangements. Licensees participating in a negotiated channel election arrangement must provide on Schedule A the name(s) and call sign(s) of all parties (licensees/permittees) to the negotiated arrangement. Submission of Schedule A constitutes certification that all parties listed have agreed to the negotiated channel election arrangement. The Commission may request submission of a copy of the Negotiated Channel Election Arrangement signed by all parties, if needed. The Commission will review the negotiated arrangement for anti-competitive effects. The negotiated arrangement must also comply with 47 C.F.R. § 73.623(g). All parties to the Negotiated Channel Election Arrangement must supply their proposed facility's engineering information upon request.

The licensee must indicate an alternate channel number to be elected for its final DTV operation in case its negotiated channel election arrangement is not approved by the Commission.

Pending Channel Change Requests. Licensees for which the Commission has issued a Notice of Proposed Rulemaking with respect to a channel change request may elect the new channel proposed in the NPRM.

International Coordination.

2. Item 2: International Coordination Pending Issue. Licensee must answer whether it is electing a channel that is subject to a pending international coordination issue. This is not a broad inquiry as to whether the channel is subject to coordination, but rather a narrow question to determine whether an international coordination issue is preventing the licensee from obtaining its desired facilities. If yes, licensee must attach as an Exhibit to this form an explanation about its pending international coordination issue.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the form to determine the ultimate channel to be awarded for post-transition DTV operation. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your form may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your form may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; (b) any employee of the FCC; or (c) the United States

Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you file an incomplete form, the form may be returned without action having been taken upon it. Your response is required to participate in the digital channel election process.

We have estimated that each response to this collection of information will take from [REDACTED]. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PER, Paperwork Reduction Project ([REDACTED]), Washington, DC 20554. We will also accept your comments via the Internet if you send them to Leslie.Smith@fcc.gov. Please DO NOT SEND COMPLETED FORMS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of [REDACTED].

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

INSTRUCTIONS FOR FCC 382 SCHEDULE A

SCHEDULE A FOR NEGOTIATED CHANNEL ELECTION ARRANGEMENTS:

SCHEDULE A INSTRUCTIONS

- A. This Schedule A is to be used with FCC Form 382, the Digital Channel Election for Television Broadcast Station: First Round Election. Complete this Schedule if involved in a negotiated channel election arrangement.
- B. Submission of this Schedule constitutes certifications that all parties listed in Item 1 have agreed to the negotiated channel election arrangement.
1. Item 1: List of Parties to Arrangement. Licensee/permittee must provide the name(s), call sign(s) and facility ID number(s) of all parties involved in the negotiated channel election arrangement.
2. Item 2: Additional Submissions. Licensee/permittee must provide a copy of the Negotiated Channel Election Arrangement and/or engineering information to the FCC upon request.

NOTE: The negotiated channel election is valid only upon Commission approval. The Commission will review the negotiated arrangement for anti-competitive effects and significant levels of interference that would affect service to viewers. The negotiated arrangement must also comply with 47 C.F.R. § 73.623(g).

See the FCC Form 382 Main Form Instructions for public burden estimate.

FCC 382

DIGITAL CHANNEL ELECTION FORM FIRST ROUND ELECTION

Must Be Filed by _____ [DATE]

FOR
FCC
USE
ONLY

FOR COMMISSION USE ONLY

FILE NO.

PLEASE READ INSTRUCTIONS BEFORE
COMPLETING THIS FORM

SECTION I - GENERAL INFORMATION

Licensee/Permittee Information

1. Legal Name of the Licensee/Permittee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

Station/Facility Information

2. FCC Registration Number	
Call Sign	Facility ID Number
Community of License: City	State

3. Currently Assigned Channels:

a. DTV Channel ☐ ☐ Not Applicable

b. NTSC Channel ☐ ☐ Not Applicable

Contact Information (if different from licensee/permittee)

4. Contact Representative	Firm or Company Name	
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

Purpose of Form:

5. The purpose of the channel election process is for television broadcast licensees and permittees to select an in-core channel (i.e., channels 2-51) for their post-transition DTV operation. The purpose of the First Round Election Form is for all licensees/permittees currently assigned at least one in-core channel to make a channel election. **(SELECT ONE)**

a. ☐ Channel Election b. ☐ Amendment

SECTION II – CHANNEL ELECTION

All broadcast television licensees and permittees participating in the digital channel election process are required to file a channel election form. Licensees/Permittees that do not submit a channel election form by the deadline on page one will be assigned a channel by the Commission for post-transition DTV operation.

First Round Channel Election:

1. Channel Election: **(SELECT ONE)**

- a. ☐ Licensee/permittee makes the following channel election from its currently assigned (DTV or NTSC) channels:

(indicate in-core channel number for final DTV operation here).

NOTE: Post-transition rights to other in-core channel(s) currently assigned to the licensee/permittee for this station are released upon licensee/permittee receipt of a Commission tentative channel designation.

- b. ☐ Licensee/permittee has entered into a Negotiated Channel Election Arrangement and, accordingly, makes the following channel election, subject to Commission approval:

(indicate in-core channel number for final DTV operation here).

Licensee/permittee must complete Schedule A.

If the Commission does not approve licensee/permittee's negotiated channel election arrangement, licensee/permittee makes the following channel election from its currently assigned (DTV or NTSC) channels:

(indicate alternate in-core channel number for final DTV operation here).

NOTE: Post-transition rights to other in-core channel(s) currently assigned to the licensee/permittee for this station are released upon licensee/permittee receipt of a Commission tentative channel designation.

- c. ☐ Licensee/permittee makes no channel election; accordingly, licensee/permittee elects to participate in the second round of elections. This option may be selected only by licensees/permittees with only one in-core channel or with two low VHF channels (2-6).

NOTE: Post-transition rights to in-core channel(s) currently assigned to the licensee/permittee for this station are released.

International Coordination:

2. Is the licensee/permittee electing a channel that is subject to a pending international coordination issue?

☐ YES ☐ NO

If yes, licensee/permittee must attach an explanation as an Exhibit to this form.

Exhibit No.

SECTION III

I certify that the statements in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this election form. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT
(U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

ELECTION FORM SCHEDULE A**SCHEDULE FOR NEGOTIATED CHANNEL ELECTION**

Licensees/permittees involved in a negotiated channel election arrangement must complete this Schedule. The purpose of this Schedule is for licensees/permittees to provide details concerning their negotiated channel election arrangements.

1. Licensee/permittee has entered into a negotiated channel election arrangement with the following licensee(s)/permittee(s): (provide name(s) and call sign(s) as necessary)

	Licensee/Permittee Name	Call Sign	Facility I.D. No.
a.			
b.			
c.			
d.			
e.			
f.			
g.			

2. Licensee/permittee must provide a copy of the Negotiated Channel Election Arrangement and/or engineering information to the FCC upon request.